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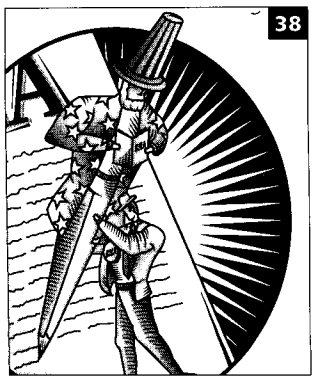

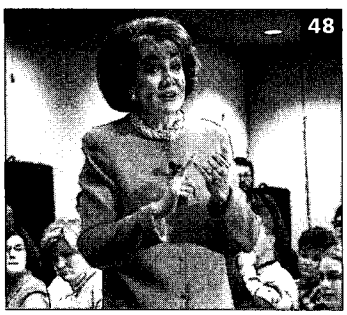

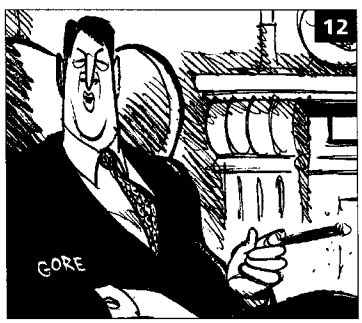

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When Doves Cry

Wars without ends

By Virginia Postrel

In Washington, they are calling the fight over Kosovo "Albright's war." The secretary of state's biography, it's said, is the reason NATO has gone to war with Serbia. Madeleine Albright was born in Czechoslovakia, the child of a diplomat stationed in Belgrade before and after World War II; the family twice had to flee the continent, to England to escape the Nazis and to America to escape the communists. Albright calls herself "a product of Central Europe" and says she has seen what happens "when you don't stand up to evil early."

Unlike Nazi Germany, however, Serbia is not an expansionist power trying to conquer Europe. It is a barbaric and oppressive state operating within its own borders, which makes opposing it much more difficult both militarily and politically. "Standing up to evil" does not, in this case, provide an obvious military objective, such as repelling or deterring an invasion. What, then, is the goal of the confrontation? How do you know when you've won?

Like Vietnam, this is a peculiar, post–World War II war, conducted by an administration with little interest in foreign policy and way too much belief in its own ability to create reality. The Clinton administration fell into war with Serbia because policy makers overestimated the fear that threatening words would inspire in the enemy (a word they rarely use, lest war seem a matter of us vs. them).

"As we contemplated the use of force over the past 14 months, we constructed four different models," a senior official told *The Washington Post.* "One was that the whiff of gunpowder, just the threat of force, would make [Slobodan Milosevic] back down. Another was that he needed to take some hit to justify acquiescence. Another was that he was a playground bully who would fight but back off after a punch in the nose. And the fourth was that he would react like Saddam Hussein," fighting back and maintaining power.

These "four" models are actually two: The enemy quickly capitulates, or he fights back for real. The war is a minor confrontation, or a long struggle. Treating the first scenario as though it were three different ones skews the debate. It makes the outlier appear less likely than it is.

Policy makers, to be fair, were misled by their Bosnia experience, when air strikes (combined with effective ground actions by Croat and Bosnian Muslim forces) did make Milosevic come to terms. But the administration seems to have been willfully blind to the differences: The struggle over Kosovo threatens Milosevic's regime and attacks Serbian nationalism; neither was the case in Bosnia.

More to the point, responsible planning would have prepared for all scenarios, not merely the ones policy makers thought—or hoped—were most likely. Yet NATO went to war on the assumption that bombing alone would make Milosevic surrender, with no ground troops necessary, no sudden flood of deportees, and no destabilization of neighboring countries. Having restricted itself to a single tactic, the Clinton administration assumed Milosevic would do the same. Instead, he proved a wily foe, willing to use whatever means at his disposal.

The president apparently gave no thought to what would happen if bombing did not work. Afraid of the implications of inserting ground troops, he publicly precluded that option from the start. When the Italian prime minister asked Clinton what the United States would do if bombing did not convince Milosevic to back down, he had no answer. According to a report in *The Washington Post,* he had to consult his national security adviser Sandy Berger, who hesitated and said, "We will continue the bombing." That's their plan, and they're sticking to it.

Bombing was, the president told reporters, "the best available option to show aggressive action, to keep NATO's word, to keep our NATO allies together and to give us a chance to preserve our objectives." What exactly those objectives might be—and why the goal is to "preserve" rather than achieve them—is left unexplored. As *Post* columnist Jim Hoagland puts it, "This is a lawyer going to war." Military action is a matter of words and "show." Chant the right words, put on the right show, and the problem will vanish.

That naive assumption reflects a more general psychology. The war with Serbia is a strange conflict. It is a war conducted by doves who are profoundly uncomfortable with the realities of international conflict, who cannot bear to recognize the clash of powers and interests and, thus, the possibility of real winners and losers. In theory, such discomfort could lead to prudent, restrained foreign policy. Given America's dominant international position, however, it more often encourages ambitious policy makers to misapply military force—to use it for nebulous, altruistic purposes with no clear national interest and no clearly achievable ends.

Like the "got a problem, get a program" attitude that informs so many grandiose domestic schemes, this approach to foreign policy assumes that complex problems can be solved easily, with few important tradeoffs, through the application of strong language, legal niceties, and good intentions. Policy makers engage military force without acknowledging its nature and limitations. They treat the mere threat of force as though it were a magic spell, whose incantation changes reality. Strategy and tactics become extraneous, death and destruction unmentionable.

In their classic, Wilsonian form, such dovish wars are not fought for narrow national interests but to promote broad moral goods. ("This is not my war....This is America's fight for our values," says Albright, defensively.) They therefore lack clear measures of success. How does an army, whose task is to defeat the enemy,

"make the world safe for democracy" or, in Bill Clinton's words, for "votes and arguments and disagreements and demonstrations and religious differences and ethnic differences, but recognizing that it is better to work together for a brighter tomorrow."

A goal like that is absurd for a military campaign. To even come close to achieving it would require NATO to conquer, occupy, and indefinitely rule Serbia—a goal Clinton would never conceive, much less articulate and try to sell. (And a goal that, if achieved, seems unlikely to rally the Serbs to the cause of multicultural harmony.) The president could, of course, go for something more militarily realistic and politically acceptable. But acknowledging a limited goal would compromise the grand vision of remaking the world.

Hence the escalation of the war of words. Supposedly, this campaign is simply to achieve autonomy for Kosovo, with NATO peacekeepers to assure the Kosovar Albanians' safety. Personalizing the conflict by demonizing Milosevic has, however, also escalated it. In essence, the administration is demanding unconditional surrender without saying so—and certainly without employing the military means to achieve that objective.

The result is mush: no clear goals at all. True to the habits of the "permanent campaign," the administration treats military strategy as something to be reinvented on a day-to-day, news-cycle-to-news-cycle basis. The main objective seems to be avoiding bad press. *Time* correspondent Margaret Carlson has gently called this "Clinton's improvisational way of going about it."

This is an insult to improvisation, which is required in all military engagement. "No plan survives contact with the enemy" is, after all, a truism. Adaptation to surprises, failures, and changing conditions is essential. But successful improvisation depends on clear objectives.

The administration has turned that process on its head. The means are fixed—bombing and harsh rhetoric—while the goals fluctuate. The result is escalation by accident, as the stakes grow higher and the end disappears. "The thing that bothers me about introducing ground troops into a hostile situation, into Kosovo and into the Balkans," Clinton told Dan Rather in a CBS interview, "is the prospect of never being able to get them out." The president is right to worry about open-ended commitments. Wars without military objectives have a tendency to go on forever. Unfortunately, he has taken America into just such a war.

Führer Furor

Is Milosevic a Hitler?

By Nick Gillespie

The war in Yugoslavia (a war in fact if not in official declaration) has suffered no shortage of casualties, refugees, destruction—and overheated, overblown references to Adolf Hitler and Nazism.

As is usually the case, what in debating circles is known as the "reductio ad Hitlerum" doesn't advance rational disputation. Rather, it shifts debate into the realm of emotional response, where facts and logic matter less than feelings and passion. Such a tactic may sometimes be appropriate in the classroom or the kitchen, but it's certainly no way to conduct American foreign policy.

To justify the NATO "action" in the Balkans, the Clinton administration has moved quickly to cast Slobodan Milosevic in the Hitler mold. In his first extended attempt to explain what "this Kosovo thing is all about," Bill Clinton rhetorically asked a crowd of AFSCME union members, "What if someone had listened to Winston Churchill and stood up to Adolf Hitler earlier? How many people's lives might have been saved, and how many American lives might have been saved?"

Secretary of State Madeleine Albright has, as NBC's Andrea Mitchell put it, "demonized [Milosevic] as a modern-day Hitler." Other NATO supporters have similarly penciled in a mustache on Milosevic. Reagan administration U.N. ambassador Jeane Kirkpatrick, for instance, has said that Serbian actions in Kosovo constitute "the closest thing to genocide that we have seen since Pol Pot's killing fields in Cambodia or Hitler's gas ovens in Auschwitz."

It hardly exonerates Milosevic's grotesque policy of ethnic cleansing in Kosovo—responsible for at least a reported 2,000 deaths and as many as 40,000 refugees in the year before NATO attacked Belgrade—to point out that he is not Hitler and the Yugoslavian government is not Nazi Germany. Not only is the scale vastly different, so were the actual policies, at least before NATO intervened.

Prior to the bombing, and even for some weeks after it began, Milosevic's purpose was plainly not to annihilate all ethnic Albanians wherever they lived in Europe but to expel them from Kosovo. Milosevic's solution to his Albanian problem—however monstrous—is no Final Solution. Indeed, if there is a World War II parallel to be drawn, it may well be the stinginess with which NATO countries—including and, given its leadership role, especially the United States—have admitted Kosovar refugees.

On one level, the Hitler references serve an obvious purpose: to shut down debate about a "humanitarian" intervention that has so far only increased the toll of human suffering on all sides. After all, when you're fighting the Nazis, even your loyal opposition must sign on to the war; indeed, it becomes not simply unpatriotic but antihuman to question even the minor details of a plan, much less its larger purposes.

That official explanations for U.S. involvement came only *after* the bombings began—and have lurched uncomfortably and unconvincingly among realpolitik national security concerns, the need for international economic stability, and humanitarian intervention—only underscores the lack of national consensus on what, if any, action should have been taken in the first place.

Beyond obscuring that fundamental discussion, the Hitler analogies have a deeper, more insidious effect. Such glib

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equations preclude any sort of diplomatic or nonmilitary settlement of the Kosovo matter: You don't negotiate peace with a Hitler; unconditional surrender and total capitulation are the only acceptable terms.

"The bottom line," says Albright, "is that more and more people are asking [the] question, 'Is it going to be possible to deal with somebody that is behind all this?' " Never mind that the United States sat down to deal with Milosevic long after he committed worse crimes in Bosnia—and that the United States routinely negotiates cheerfully with far more murderous heads of states. To ask such a question after invoking Hitler is to answer it in the negative.

There is another reason to worry over this latest cycle of reductio ad Hitlerum: Every false invocation not only cheapens the original referent, it distorts our vision and undermines America's ability to act meaningfully in the world. If Milosevic is Hitler, then the planet is thick with such monsters. In such a landscape, it becomes increasingly difficult to identify the situations calling for U.S. involvement, much less its proper terms.

Neither of the predictable results of such a mindset—hopelessness and disengagement on the one hand, hubris and overreaching on the other—is likely to bring more peace to the globe. Better, then, to drop the Hitler rhetoric and get on with a legitimate debate over both the Balkans and U.S. foreign policy.

Nimble Fingers

Congress wants to exempt the Amish from child labor laws. Why not everyone else?

By Michael W. Lynch

Last month a waist-high waitress, who looked no older than 10, served my buddy his grilled chicken sandwich as we lunched less than a block away from the White House. As she shoulder-pressed the plate onto our table, the three of us dining blurted out simultaneously: child labor violation! We considered turning in the establishment but concluded that it must be a school holiday and at least one of her parents must own or work at the restaurant. At any rate, we said as we dug into our food, it's good for her.

Such scenes are common in areas with lots of small, family-owned businesses. I used to see my classmate, Sandy Kwong, doing her homework behind the cash register at her parents' Chinese restaurant. She was one of our class's top performers in the six years we shared elementary school teachers, so I know the interruptions to cash out tabs and count change didn't hold her back. When I worked in San Francisco, tender little hands would often take my legal tender in the afternoons at a deli near my office. Many teens, and even pre-teens, labor in the child-care industry as neighborhood babysitters. Others raise cash by mowing lawns, trimming hedges, and pulling weeds.

Are any of these common scenes also crime scenes? Most likely. Under rules spawned by the Fair Labor Standards Act of 1938, it's illegal for children under 14 to work in any commercial establishment. Adolescents can start working legally at 14, in limited jobs for limited hours. At 16, the hours increase and job options expand, but even 16- and 17-year-olds are restricted from working in 17 industries deemed hazardous by the U.S. Department of Labor.

If a child's mother or father—an aunt or uncle won't do—is the business' sole owner (not a partner or major investor) then the child may work, so long as it's not considered a hazardous or manufacturing occupation. My classmate Sandy was legal, and the young Washington waitress may be legal, if a parent owns the restaurant. Babysitting is legal so long as kids keep it under 20 hours a week and don't work for a company. It's illegal for individuals not yet 16 to operate just about any power-driven machinery, but the DOL turns a blind eye to kids who work for themselves.

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The lawn mowers therefore are violating the law only if they work for a landscaping company and pay taxes. Some of the provisions are mind-boggling. One has to be 18 years old to drill a hole in a piece of wood. But aiming the drill bit at a piece of drywall is legal, provided one doesn't run it into a wood stud and isn't on a construction site.

Child labor laws causes few problems for most people, since incomplete enforcement means many small, family-owned businesses operate unharassed. (In 1998, the Department of Labor found some 5,500 child labor violations, the majority of which were for hour restrictions for 14- and 15-year-olds. Approximately 4 million teenagers work outside the home on someone's payroll.) But in the fall of 1996, when the department began an enforcement sweep of Pennsylvania sawmills, it turned up an unlikely group of outlaws: the Amish. Of the 30 mills the DOL inspected, nine were cited for violations of child labor laws. Three of the mills were owned by Amish.

The Amish take seriously the idea that one shouldn't let school get in the way of one's education. For an Amish youth, eighth grade is the end of formal schooling, after which the school of hard knocks takes over. They call it "learning by doing," which has traditionally meant going to work on the farm. But change comes even in Amish country. High land prices are increasingly forcing the Amish to turn to other trades and crafts, chief among them sawmills, furniture making, and welding shops. The problem is that Amish youth can't legally work in sawmills until they are 18, due to two labor regulations dating back to 1941.

After the 1996 busts, the Amish did what any law-abiding group of Americans under siege by the feds would. They first tried reasoning with the DOL, asking for an exemption. This didn't work. The DOL's position, as stated in an April 1998 letter, is that "we have concluded that it would be inconsistent with [the law] and dangerous to their health and well-being to allow youth—including Amish youth—to be employed in sawmills in any circumstances." Having failed to sway regulators, the Amish went to Congress.

In 1998, the House passed a bill that would effectively exempt Amish youth from DOL regulations, provided the minors are supervised by Amish adults and don't operate any power equipment. A companion bill, sponsored by Sen. Arlen Specter (R-Pa.), died of neglect in the Senate. This year, the House passed the bill on March 2, and Specter is expected to sponsor another companion bill. The White House has expressed "deep concerns" regarding the bill, and both the DOL and the Department of Justice oppose it. Their opposition is revealing.

A cursory glance indicates the Amish are a special case. Their lifestyles are outside the American mainstream and they have already secured exemption from compulsory education after the eighth grade. This is in fact the DOJ's position: that to grant an exemption to the Amish would be to favor a particular religious sect, and therefore violate the First Amendment's Establishment Clause.

The DOL echoes this objection, worrying aloud that its enforcement officers will have to inquire into religious beliefs to enforce the law. The DOL is also concerned that "this proposal could lead to requests to open up other hazardous workplaces to child labor for select communities and [we] see no clear governing principle to determine where such actions may be appropriate."

These, of course, aren't the DOL's only concerns. It spills more ink over safety. It points out, for example, that in 1996 the "lumber and wood products" industry had 25.6 deaths per 100,000 workers, five times the national average across all industries. Officials point to particular instances of dismemberment and death in sawmills, where employees have been suffocated by sawdust, been run over by loaders, and lost arms and fingers while running saws, to justify their stand. There's no denying it's dangerous work.

Despite themselves, the DOJ and DOL are onto something important. Why not broaden the exemption to anyone whose parents owns any business or are willing to supervise them at work? The crux of the issue is simple. Who is better suited to decide what is best for children or adolescents: their parents or government employees?

There's nothing magic, after all, about turning 14, 16, or 18, the three main cutoffs for child labor laws. Some 30-year-olds are far too absent-minded to be safe on a shop floor, at the controls of a piece of heavy equipment, running a saw, or with an oxygen-acetylene cutting torch in hand. Others may be trustworthy in such situations before they are old enough to shave.

The issues of freedom transcend the Amish example. Consider this quote from Chris Blank, chairman of The Old Amish Order Steering Committee, who was making his case to the House Committee on Education and the Workforce in April 1998. Said Blank, "It is a long standing Amish belief and tradition to instill good work ethics in our children at a young age and to start training a child at a fairly young age to become a self-supporting, respectful and law-abiding citizen." Replace "Amish" with "American," and the quote reads just as well.

Try this trick with another statement from the House committee report, "The current child labor laws thus directly and significantly interfere with the ability of Amish families to carry out an important part of their beliefs, culture and lifestyle." It would be nice if the government universally applied such a noninterference principle. ◆

REASON NEWS

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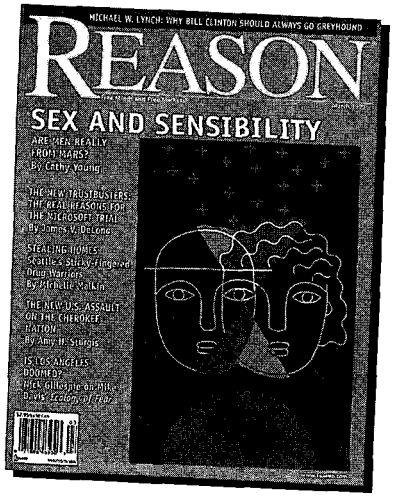
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THE REAL REASONS FOR THE MICROSOFT TRIAL
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Mick Gillespie on Mike Davis' Legion of Fire

More Sensible Sex Discussion

Cathy Young's article ("Sex & Sensibility," March) was the most sensible discussion of gender differences I've run into in a long time.

One addition: You can't use gender stereotypes (or their absence) to predict what fields women will enter when the glass ceiling is lifted. You have to look at where they were before. Hence, bookkeepers became accountants (myself among them). Nurses went to medical school. Legal secretaries went to law school. Engineering secretaries didn't become engineers because, by and large, there was no clear and obvious progression from one to the other. The progression from mechanic to technician to engineer was and still is a largely male career path from bottom to top.

The next rush was women entering professions traditional to the men in their families: Policemen's daughters became cops and soldiers' daughters joined the armed services. Again, these were things they were familiar with, if only (this time) at second hand.

Patricia (Pat) Mathews
mathews@unm.edu

Microsoft's Misdeeds

I greatly enjoyed James V. DeLong's piece on antitrust ("The New Trustbusters," March). I'm afraid he's right about the rebirth of antitrust activism—and this may be just the beginning. I knew I should have taken all the light bulbs with me when I left the Federal Trade Commission in 1989.

However, Mr. DeLong's visceral opposition to antitrust enforcement has prevented him from properly analyzing the Microsoft case. He says the government is trying to prove that Microsoft is a meanie and that the government hasn't successfully proved that Microsoft is a monopoly. Wrong on both counts.

Microsoft so obviously has a monopoly that denying it doesn't pass the laugh test —even in Washington. More than 90 percent of PCs are shipped with Microsoft Windows installed; Microsoft's prices have risen faster than hardware components; and entry into the PC operating system market is clearly all but impossible. If that doesn't indicate the existence of a monopoly, then there are no monopolies.

Second, the government has been trying to prove not that Microsoft is a meanie (Microsoft has made that case), but that the meanie engaged in restrictive practices which produced no economic efficiencies. According to press accounts of the trial, the government seems to have had considerable success in making that case.

Antitrust law says there are certain restrictive practices which, when engaged in by monopolists, are illegal. Even "public choice" theorists like Mr. DeLong who realize that the history of antitrust enforcement is dark indeed should be able to understand that a good case comes along every now and then.

Daniel Oliver
Chairman (1986–89)
Federal Trade Commission
Washington, DC

"The New Trustbusters" didn't address what I consider to be Microsoft's most insidious practice: shrink-wrap licensing. Microsoft may not be the only company that uses this method, but its licenses are among the most restrictive.

It is impossible to buy a laptop without paying for Windows. Even VA Research, a vendor that specializes in Linux, includes Window disks and manuals when you buy a "naked" laptop (no operating system) from them. This is because all the laptop manufacturers have a per-processor licensing arrangement with Microsoft. Microsoft gets paid even if Windows is not installed or used. (Licensing applies to desktops and servers as well, although you can avoid it by building your own.)

According to Microsoft's End User Licensing Agreement (EULA), you cannot sell, rent, or lend the software because it is licensed to that particular machine. Also, you are not allowed to use the software if you do not agree with the license. So non-Window users are in the position of paying for Windows even if they do not use it.

For now, there seems to be a legal out for non-Windows users. A clause in the EULA states: "If you do not agree to the terms of this EULA, PC Manufacturer and Microsoft are unwilling to license the software product to you. In such event, you may not use or copy the software product, and you should promptly contact PC Manufacturer for instructions on return of the unused product(s) for a refund."

It's simple enough: Return Windows for a refund. However, it is not so simple in practice. Microsoft's position is that the licensing agreement is between you and the manufacturer and you have to contact the manufacturer for the refund. The

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manufacturers' position is that their licensing agreement with Microsoft prevents them from giving a refund. There is some validity to this argument because the manufacturers' agreement with Microsoft prevents them from disclosing the per-processor price. A refund given specifically for Windows is a violation of the contract.

Microsoft and the laptop manufacturers are rushing to close the refund loophole even though only five people have gotten a refund (between $5 and $70) to date. The Australian version of Windows '98 removed the reference to a refund. The manufacturers have also tightened their definition of what constitutes acceptance. Compaq has stated that you have accepted the license if you turn on the computer. Dell is taking the position that you have to return the entire machine if you will not consent with the EULA.

Another problem is that you are not allowed to see the EULA until you have already purchased the laptop. You cannot find a copy of the EULA on Microsoft's Web site. If you call Microsoft for a copy of the EULA, you are told that you have to get it from the manufacturer.

Buyers are stuck in a Catch-22. You can't read the EULA until you pay for the software. Once you have paid for the software, no refunds.

I realize that these disputes fall more into the category of contract law than antitrust law. But they demonstrate that Microsoft does have monopoly power on the PC market and they use this power to force every purchaser to pay for Windows even if they do not use it.

Open source software, Linux in particular, has started to make inroads against Microsoft's monopoly. Apache is used on 52 percent of Web servers while Microsoft's IIS is only used on 26 percent. Several software manufacturers have announced that they will port some of their server software over to Linux. More companies are replacing their NT servers with Linux, and a growing number of users are becoming more vocal about their opposition to the "Microsoft Tax."

The current battle between Microsoft and open source makes an interesting test of the statement, "The only monopolies that can exist are the government enforced monopolies." Will Microsoft be able to use their dominance of the desktop OS to force the Internet companies to switch from the current open standards to Microsoft's proprietary APIs? Will Microsoft's policy of "embrace, extend, and extinguish" work against open source? Will Microsoft be able to leverage their near monopoly control of the desktop market to gain control of the server market? Only time will tell.

Garnet Harris
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James V. DeLong replies: Since Daniel Oliver is one of the people lauded in my article for the salutary antitrust reforms of the '80s, I hesitate to dispute him. But I will do so anyway.

A continuing problem in antitrust law is the slipperiness of the terms. Oliver says that Microsoft has a monopoly, but this really does not tell you much. First, the "90 percent" he cites is a dubious number; see the thoughtful piece by Alan Reynolds of the Hudson Institute in *The Wall Street Journal* on April 9, 1999. Second, market share is not the important part of the issue. The real question is market power, which is the power to extract high prices, and whether such power is enduring over time. I doubt it. If Microsoft tried to raise prices more than minimally, I think it would rapidly find itself under siege. For more on this debate, check out the testimony of economist Franklin Fisher on the Department of Justice Web site (www.usdoj.gov) and the white paper "Why Does Microsoft Charge So Little for Windows?" on Microsoft's site.

Similarly, I disagree with the comment that entry is "all but impossible." Microsoft is saddled with a legacy called DOS, which most nerds regard as clunky. In developing Windows NT and Windows 2000, Microsoft bit the bullet and started over, writing on blank paper. The market was open to any company that preferred to innovate rather than whine, to leapfrog Windows, build from scratch without the burden of DOS clunkiness, and then use this newness as a marketing pitch to the I-hate-Microsoft crowd and to the hard-eyed corporate IT managers who are well aware of the advantage of multiple sources. One problem of aggressive but vague antitrust doctrines is that they seduce business people into trying to get the government to do their work for them.

As to the business practices, I have not read the whole trial transcript, but I am skeptical. They look to me like hard bargaining over the terms of cooperation and partial integration among firms that are partly allied and partly antagonistic—"co-opetition" is a current buzzword. I doubt that Microsoft is in the business of shafting developers for the simple reason that this is not where its self-interest lies. By being fair to developers, Microsoft can get the benefits of intense work by creative people. Reputation over time really counts in this area, and Microsoft's victory over OS/2, which was by no means foreordained, may well be due to its superiority over IBM in dealing with the developer community.

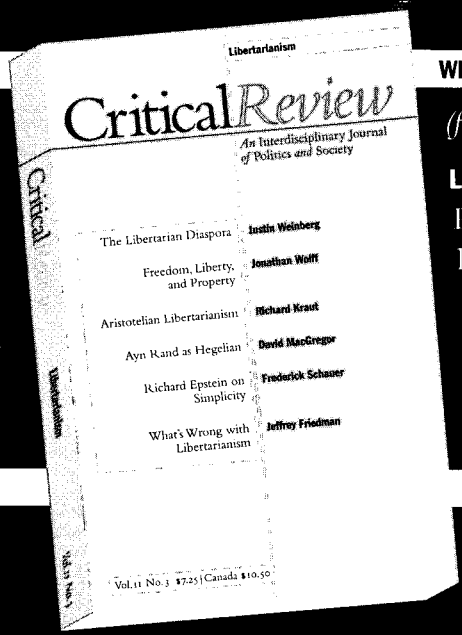
On the other hand, I do not doubt the existence of individual cases of over-reaching. But such cases are for contract lawyers, not antitrust enforcers. Antitrust by evil anecdote is bad policy. I was once involved in a case of alleged price fixing in which a couple of huge corporations were assessed more than a billion dollars in damages. The evidence? Three conversations among low-level salesmen at trade association meetings during which prices were mentioned. This is the kind of thing that gives antitrust a deservedly bad rep.

Mr. Harris raises a different set of issues, which are, as he notes, primarily questions of contract and intellectual property rather than antitrust. However, the software companies have a devilish problem of combating the rampant piracy that permeates the industry, and I am a little puzzled over what Mr. Harris wants.

Does he want to negotiate a license that lets him use his software on more than one machine? It is the nature of the world that large users can negotiate for special treatment, but individuals cannot because the transaction costs are too high.

In any event, the computer hardware/software package—the total functionality—is dirt cheap and dropping every year. The EULA system may be annoying, but it is part of the whole system that has showered computer users with incomparable blessings. The whole controversy reminds me of the old joke about the man who jumped into a raging torrent, pulled out a drowning child, and triumphantly returned him to his mother. She glared at the rescuer and said: "Where's his hat?"

Libertarianism Rethought



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Silent Right

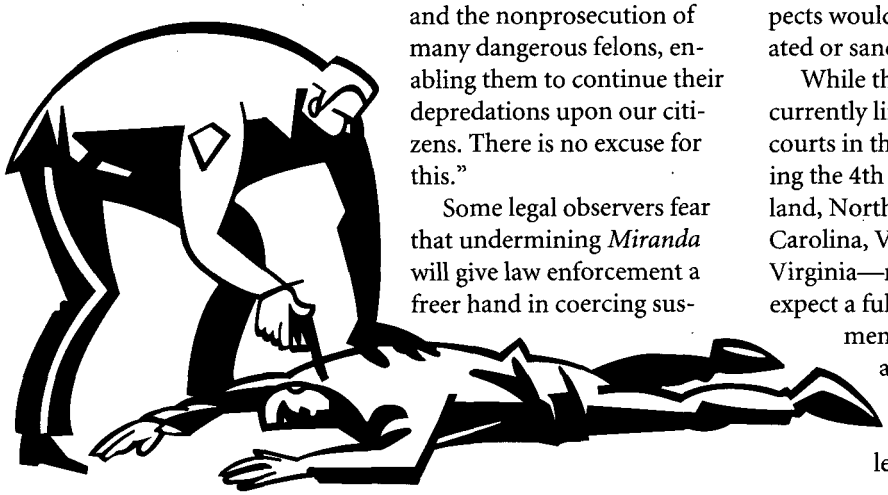
By Brian J. Taylor

Anyone who has watched a cop drama during the past few decades is familiar with the so-called *Miranda* warning: "You have the right to remain silent; anything you say can and will be used against you in a court of law. You have the right to an attorney..." The warning, which grew out of a 1966 Supreme Court case, is designed to advise individuals placed under arrest of their legal rights; since its inception, it has effectively barred prosecutors from using confessions given before a suspect has been explicitly made aware of his rights. But if a recent court decision holds up, television may be the only place you'll ever hear the *Miranda* warning again.

In February, a three-judge panel of the U.S. Court of Appeals for the 4th Circuit ruled in *United States v. Dickerson* that the *Miranda* warning no longer governs the admissibility of confessions in federal court. *Dickerson* involves a bank robber from Maryland who confessed to his part in several heists. A lower court suppressed the confession on the grounds that it had been given before he was read his *Miranda* rights. The appeals court reversed the decision and ruled that a statute passed two years after *Miranda* is the governing authority.

That statute, USCA 3501, was passed as part of the Omnibus Crime Control Act of 1968 and requires only that a confession be offered voluntarily in order to be used in court, thereby bypassing *Miranda*-related legal and evidentiary requirements. But the Department of Justice has never seen fit to rely on the law, which is widely viewed as an attempt to get around *Miranda*. In fact, USCA 3501 came into play in *Dickerson* only because two right-leaning legal groups—the Washington Legal Foundation and the Safe Streets Coalition—submitted a brief in support of the statute.

The appeals court excoriated the Justice Department for failing to invoke the statute, saying the government "has caused the federal judiciary to confront a host of 'Miranda' issues that might be entirely irrelevant under federal law....It may have produced—during an era of intense national concern about the problem of runaway crime—the acquittal and the nonprosecution of many dangerous felons, enabling them to continue their depredations upon our citizens. There is no excuse for this."



Some legal observers fear that undermining *Miranda* will give law enforcement a freer hand in coercing suspects into making false confessions. Robert Pambianco, chief policy counsel for the Washington Legal Foundation, counters that the decision merely allows the introduction of voluntary confessions before *Miranda*'s "magic words" are spoken and should not usher in a climate where abuse of suspects would be legally tolerated or sanctioned.

While the decision is currently limited to federal courts in the states comprising the 4th Circuit—Maryland, North Carolina, South Carolina, Virginia, and West Virginia—most legal analysts expect a full review by all 13 members of the circuit and an eventual trip to the Supreme Court. At least two Supreme Court justices—Antonin Scalia and Clarence Thomas—are believed to favor doing away with *Miranda*'s limits on police interrogations.

Balance Sheet

By Jeff A. Taylor

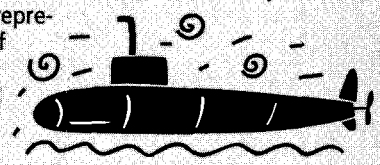
ASSETS

△ ▲ **Medisnoop.** The Health Care Financing Administration backs away from plans to collect personal data. Over 9,000 health care providers would have pestered some 4 million homebound patients with questions about whether they'd paid their rent, whether they felt a "sense of failure," and so on. HCFA claims the info is needed to provide quality medical care.

△ ▲ **Braid Free.** California may exempt hair braiders from the regulations that hair stylists face. Legislators vote to stop requiring braiders to take the nine-month course that stylists must complete to receive a cosmetology license.

△ ▲ **Taxing Taxes.** There's still a pulse for real tax reform. An Associated Press poll finds that the public thinks the current code is much too complicated. Three years ago, 50 percent of respondents found the tax code too hard; this year the number hit 66 percent. Washington's recent use of sliding-scale tax credits puts the burden on filers to figure them out. Plus, the booming stock market introduces many taxpayers to the joys of computing capital gains taxes.

△ ▲ **Booming Business.** The U.S. Navy plans to privatize its weapons-handling operations. Things that go boom are loaded and off-loaded by the ton each day. The reform is expected to save $8 billion by 2005 and will outsource some 80,500 jobs. Predictably, the union that represents the current handlers of munitions says private companies will be more slipshod on the job. We'll see, hear, and feel if they are.



Got Milk?

By Mariel Garza

In March, Rep. Carolyn Maloney (D-N.Y.) introduced a bill that would give employers a tax break if they set up a room with equipment for their working mothers to express breast milk in private.

That sounds pretty benign, but the bill is broken out of a larger breast-feeding "promotion and protection" act that was introduced in Congress last year. The comprehensive bill sought to

▼ Bursting Bags. Currently found only in luxury cars, side airbags deploy from doors, including rear ones. But it is not clear that the new bags were ever tested in real-world conditions, such as with a sleeping child slumped against a door. Safety mavens say kids and small adults should stay in the back seat to avoid the explosive devices in the dashboard of cars with front airbags. Pretty soon the safest spot will be on the roof.

▼ No Account. President Clinton presses ahead with a plan to dole out federal money for Universal Savings Accounts. The general idea has won praise on the right from those who confuse an entitlement with investment and think the handout makes it easier to privatize Social Security.

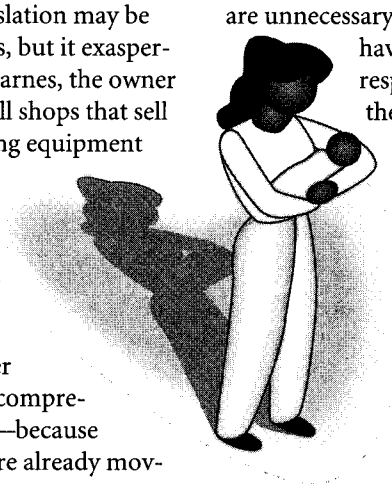
▼ Tagging Butts. A California legislator wants the state to adopt a tougher warning label for cigars. Carole Migden, a Democratic assemblywoman from San Francisco, declares that "smoking cigars has become the rage, especially among teenagers." Yet despite their recent sexy image, cigars are not that popular. The 5.3 million puffed in 1998 was less than half the number smoked 25 years earlier.

▼ Gin Fizzle. Maryland is the latest state poised to make it a felony for any Internet retailer to send alcohol into the state. Backers of the law say it is needed to keep kids from getting their mitts on booze. But the real reason states hate Internet sales is that they give consumers the freedom to avoid state-run monopolies on alcohol, with their high prices and limited selection.

LIABILITIES

regulate everything possibly related to lactation and employment—including mandating extra, unpaid breaks to express milk; setting FDA standards for breast pumps; and drafting anti-discrimination rules prohibiting employers from treating breast-feeding women "differently from other employees."

Such legislation may be good politics, but it exasperates Diane Barnes, the owner of three small shops that sell breast-feeding equipment in the Detroit area. She opposes the tax credit—and the other parts of the comprehensive bill—because employers are already moving in that direction voluntarily. Government mandates, she says, tend to kill evolving cooperative efforts.



Noting that major employers in her area, such as Ford and Chrysler, have already set up breast-feeding rooms without a push from the federal government, Barnes observes: "The laws are unnecessary. We already have companies responding to the needs of women who are breast-feeding." Rep. Maloney, though, knows better. Though her comprehensive bill went nowhere last fall—it got lost in the shuffle following November's electoral upheavals—she intends to introduce the other parts in piecemeal fashion, so we can look forward to more attempts at regulating breast-feeding in the workplace.

Hornets' Nest

By Jeff A. Taylor

The desire of cities to throw money at sports teams never makes sense. But in Charlotte, North Carolina, the urge has grown perverse. For months, officials there resisted the pleading of Hornets' owner George Shinn. Shinn claims the city must help him build a new $200 million arena, replete with all-important skyboxes, or his team will remain an also-ran in the National Basketball Association.

The city noted that it was already on the hook for the 10-year-old arena the Hornets currently play in. And besides, officials said, there might be better things to do with the estimated $150 million the city would kick in for a new hoops palace.

But in March came word that Tarheel State native and regional demigod Michael Jordan was looking to buy a chunk of the team from Shinn. The tough line instantly melted away. "With his money and his stature, it's a lot more likely that we can come up with an arena plan that the city and the public will support," the chairman of the city's New Arena Committee told *The Charlotte Observer*. The committee will make its recommendations on funding a new facility by June 30. So it would seem that Jordan's $500 million net worth, not to mention ▶

SOURCES

Will—and should—cyberspace remain a tax haven when the Internet Tax Freedom Act expires in 2001? The law prohibits government at all levels from imposing "special or discriminatory taxes on the Net." For the latest political developments on the issue, check out the Internet Tax Freedom Act Home Page **(http://cox.house.gov/nettax/frmain.htm)**. Maintained by the office of Rep. Christopher Cox (R-Calif.), one of the law's chief sponsors, the site tracks all sorts of Internet-tax-related goings-on, such as North Dakota's recent decision to approve a specific tax on Internet access.

January 1, 2000, is more than a date on the calendar: It's a state of mind. For commentary on and analysis of the mostly apocalyptic culture inspired by the coming millennium, point your Web browser (of course) to **www.y2kculture.com**. The site, maintained by Wired News Washington correspondent Declan McCullagh and the Cato Institute's director of information studies, Solveig Singleton, explores everything from "the psychology of Y2K" to "Y2K Haiku."

BRICKBATS

♦ New York Mayor Rudy Giuliani has ordered the police to crack down on traffic violations, and citations have soared. But somehow the newly vigilant police have repeatedly missed one car that keeps endangering public safety: the mayor's. Over a period of several months, the New York *Daily News* spotted the mayor's police-driven car running red lights, speeding, making illegal turns, parking illegally, and passing school buses as children boarded. When confronted by *News* reporters, Giuliani defiantly told them to "report that to the police department." Apparently, the mayor is well aware of the NYPD's spotty reputation for policing its own.

♦ When officials in Songdalen, Norway, received $25,730 from an anonymous donor who asked that the money be used to care for the elderly, they reacted the way bureaucrats normally react to gestures of goodwill. They got suspicious. They tipped off the police, who tracked down the donor. It turns out the man had routinely accepted cash payments over the years but had not declared the income in his taxes. A guilty conscience finally prompted him to try to pay the amount he thought he owed. His "good deed" won't save him from having to pay those back taxes, along with interest, fines, and legal fees.

Scott Stantis

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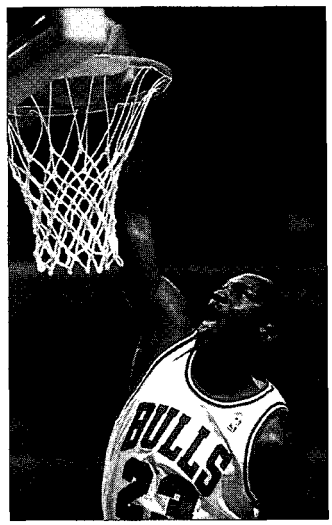
MR. CLINTON! I FIND YOU IN CONTEMPT!!
JUDGE SUSAN WEBBER WRIGHT
YOU WOULDN'T BE THE FIRST ONE, BABY...

the $10 billion wealth effect *Forbes* magazine ascribed to his pitchman efforts, actually make him more deserving of a handout.

Yet if anyone on the planet can raise private money for a development project, His Airness surely can. It is a slam dunk that



Jordan could find a way to parlay his fame—and $40 million annual income—into enough private green to build his joint. The choice is stark: imaginative, daring capitalist or welfare recipient. Which one does Mike want to be like?

Pot Hoax

By Jacob Sullum

"Some dismiss medical marijuana as a hoax that exploits our natural compassion for the sick," notes a new report from the Institute of Medicine that details the therapeutic potential of cannabis. The IOM's experts discreetly refrain from adding that it's an opinion shared by the man who commissioned the report.

"There is not a shred of scientific evidence that shows that smoked marijuana is useful or needed," Barry McCaffrey, director of the Office of National Drug Control Policy, told the *San Francisco Chronicle* in August 1996. "This is not medicine. This is a cruel hoax." At a December 1996 press conference, McCaffrey was asked whether there was "any evidence... that marijuana is useful in a medical situation." His reply was unequivocal: "No, none at all."

So it was odd that McCaffrey asked the IOM, a branch of the National Academy of Sciences, to review the evidence of marijuana's medical utility—evidence he had repeatedly claimed did not exist. Commissioned in January 1997 and released in March, the IOM report (available at www.nap.edu) confirms that it was the drug czar who was perpetrating a hoax.

"The accumulated data indicate a potential therapeutic value for cannabinoid drugs [marijuana's active ingredients], particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation," the report says. The authors find "there is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other drugs." As for the idea that "sanctioning the medical use of marijuana might increase its use in the general population"—another of McCaffrey's favorite

AP/WIDE WORLD PHOTO

Pop Sensation

Advertising has become its own art form, a literal commercial culture with complex aesthetic dimensions that go far beyond shilling. So when the editors of the trade journal *Advertising Age* recently compiled a list of the "50 Best TV spots of the past 50 years," it was more than an industry exercise; it was an act of cultural exploration.

Ad Age's selections—ranging from Dinah Shore's musical Chevrolet ads in the 1950s to Life cereal's "Hey Mikey" spots in the '70s to Bud Light's "Yes...I AM!" series in the '90s—may be arguable. But their larger point is beyond dispute: "The most memorable ads become...part of the American scene." Indeed, often more so than books, music, or movies. And often in unintended ways, such as Walter Mondale's campaign invocation of the Wendy's slogan "Where's the beef?" Or even the way in which the 1971 Coca-Cola ad pictured here—in which a multinational crowd belts out "I'd Like to Buy the World a Coke"—later gave rise to the "Hilltop Singers'" massive pop hit, "I'd Like to Teach the World to Sing." James B. Twitchell noted in *Adcult USA* (1995), "The culture we live in is carried on the back of advertising." True, but who could ever guess where it ends up and the uses to which it is put?

—Nick Gillespie

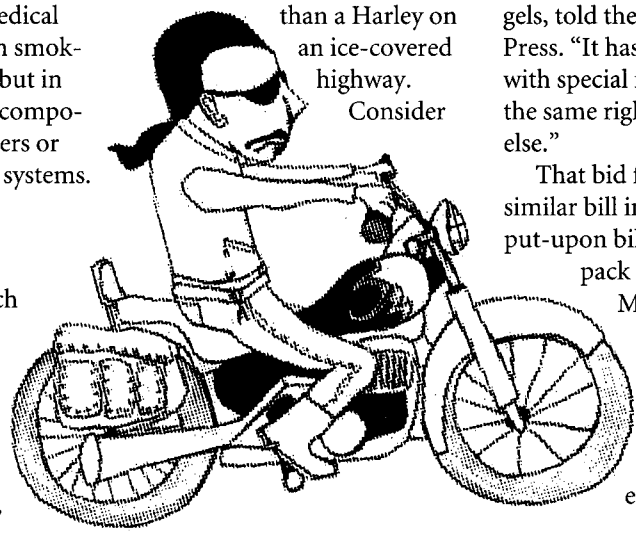
bugaboos—"there are no convincing data to support this concern."

The report finds that "the adverse effects of marijuana use are within the range of effects tolerated for other medications," with one exception: Smoking it introduces toxins that may contribute to respiratory illness over the long term. For this reason, the authors conclude that the future of medical marijuana lies not in smoking the whole plant but in absorbing its active components through inhalers or other clean delivery systems.

Mild Ones

By Michael W. Lynch

Everyone knows that bikers are rugged individualists who set themselves apart from society with tattoos, unkempt beards, greasy denim, and well-worn leather. Indeed, the mere mention of mandatory helmet laws will send them into rants concerning the rights of individuals to make their own choices, no matter how dangerous or anti-social they may seem. But when people choose *not* to associate with bikers, such crypto-libertarianism hits the skids faster than a Harley on an ice-covered highway.



Consider the United Bikers of Maine, a motorcycle enthusiast group that recently asked the legislature to include bikers in the state's Human Rights Act, which prohibits discrimination in accommodations, employment, and housing on grounds of race, gender, age, and disability. "Some would say that we want special rights," Michael Behr, president of the Maine Hells Angels, told the Associated Press. "It has nothing to do with special rights. We want the same rights as everyone else."

That bid failed, as did a similar bill in Arizona. But put-upon bikers can always pack up and move to Minnesota. In 1998, legislators in the Land of 10,000 Lakes recognized the humanity of bikers by making it illegal to discriminate against someone "because of the individual's mode of transportation or the fact that the person has the name of an organization or association on the person's clothing."

Regulatory Bunk

By Jesse Walker

A minor note from Washington: The Consumer Product Safety Commission wants to regulate bunk beds. And overturn congressional restrictions on its authority. And—incidentally—throw the whole idea of nongovernmental safety standards into the ash heap.

In January, the CPSC sought to replace current voluntary standards for manufacturing bunk beds with a mandatory code. Then it ran into a little trouble along the way. In preparing its proposal, the CPSC contacted all ▶

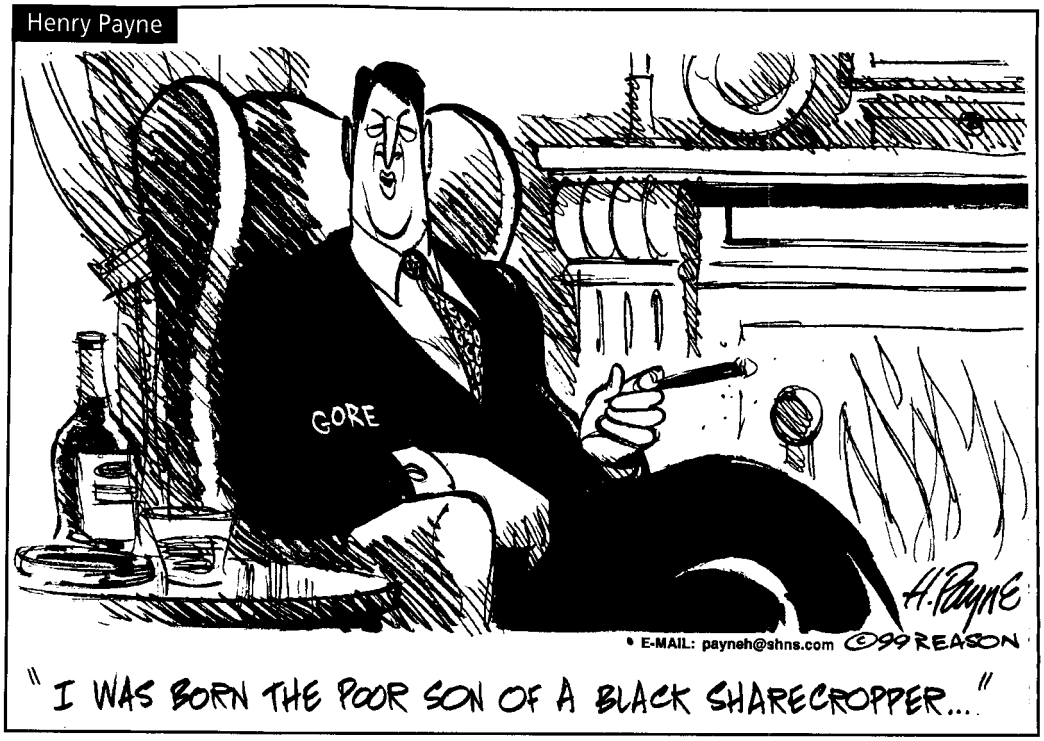
BRICKBATS

♦ The Indian government has proposed a law which would set aside one-third of the seats in parliament for women. The quota bill has drawn noisy protests from those who complain that it doesn't specifically reserve seats for Muslim women and for women belonging to economically backward communities.

♦ When a student at Kingsville District High School in Ontario, Canada, complained that money had been taken from his locker during gym class, his teacher asked for the culprit to come forward. When no one confessed to the crime, the teacher summoned the vice principal, and the two strip-searched the 20 boys in the class. They didn't find any money. But they did find trouble: After 200 students walked out of classes to protest the search, which seems to violate Canadian law, the school district opened an investigation.

♦ To their credit, Canadian educators have a ways to go before they catch up with the U.S. Customs Service, which strip-searches and detains hundreds of travelers a year looking for drugs. Some suspects are kept for hours, even days, without being allowed to call lawyers or family. Only about a fourth are caught with illegal substances. The other 73 percent are clean. Indeed, they are very clean, since Customs sometimes requires them to take powerful laxatives to make sure they haven't swallowed any drugs.

Henry Payne



the bunk bed manufacturers it could find (106, to be exact) and found that about 90 percent already complied with the existing voluntary standards. That's remarkably high—so high, in fact, that the CPSC's proposal for mandatory regulations may be illegal under the law that brought it into existence.

The Consumer Product Safety Act says that the commission cannot issue a new rule if there's "substantial compliance" with voluntary safety standards. Inside the Beltway, alas, 90 percent is evidently not considered "substantial." In February, the CPSC voted to ignore the evidence before it and publish a "Notice of Proposed Rulemaking" on bunk beds.

There's more at stake here than whether junior's bunk bed is rickety or sturdy. Such actions undermine the CPSC's "procedural integrity," writes former CPSC Commissioner Carol Dawson in the watchdog group Consumer Alert's monthly *CPSC Monitor*. If the commission ignores the plain language of the Consumer Product Safety Act, she warns, "it will become a party to superseding congressional intent that CPSC should give preference to voluntary standards" and will put all nongovernmental safety standards in jeopardy.

Cutting Remarks

By Michael W. Lynch

Sitting atop record budget surpluses, Republicans have been pondering a 10 percent, across-the-board income tax cut. But they've also been pondering this political syllogism: Only people with income pay income taxes; Democrats consider people with incomes "rich"; therefore, Republicans will be attacked for pushing a tax cut that favors the rich.

Indeed, President Clinton has warned that a GOP plan for an across-the-board tax cut would "benefit, clearly, the wealthiest Americans." House Minority Leader Richard Gephardt (D-Mo.) preemptively slammed the plan as "a massive GOP tax cut for the wealthy."

The data behind these charges came from a widely circulated analysis by Citizens for Tax Justice, a left-of-center advocacy group.

"Almost two-thirds of tax cuts would go to best-off 10%," screams the headline of a CTJ press release touting the study, which claims that 60 percent of taxpayers would get less than 10 percent of the trimmed tax dollars.

That's true—and less damning than it seems. The bottom 62 percent of taxpayers, those with annual incomes under $40,000, would get only one-tenth of the total income tax savings under a plan that trims each tax rate by 10 percent. But these individuals currently pay less than 5 percent of total income taxes, so they'll get back a disproportionate share of the cut. In contrast, the top 2 percent of earners—those who make more than $200,000 a year—currently pay a little over 40 percent of all income taxes. Yet they would snag only 39 percent of the total dollars involved in a 10 percent rate cut.

To be sure, there's no getting around the fact that tax cuts will only return money to those who pay taxes—and that the more total dollars you pay in taxes, the more total dollars you will likely save under any reform. But in proportional terms, the 10 percent across-the-board cut actually favors lower-income taxpayers.

Unfortunately, it doesn't take much demagoguery to make many Republicans go weak in the knees on the tax issue; in fact, all reports indicate that the push for a 10 percent, across-the-board cut is facing ever-increasing odds. After all, as Rep. Nancy Johnson (R-Conn.) told *The Washington Post*, "An across-the-board cut isn't the right policy for this time....When you do an across-the-board cut, it tends to help the top earners the most."

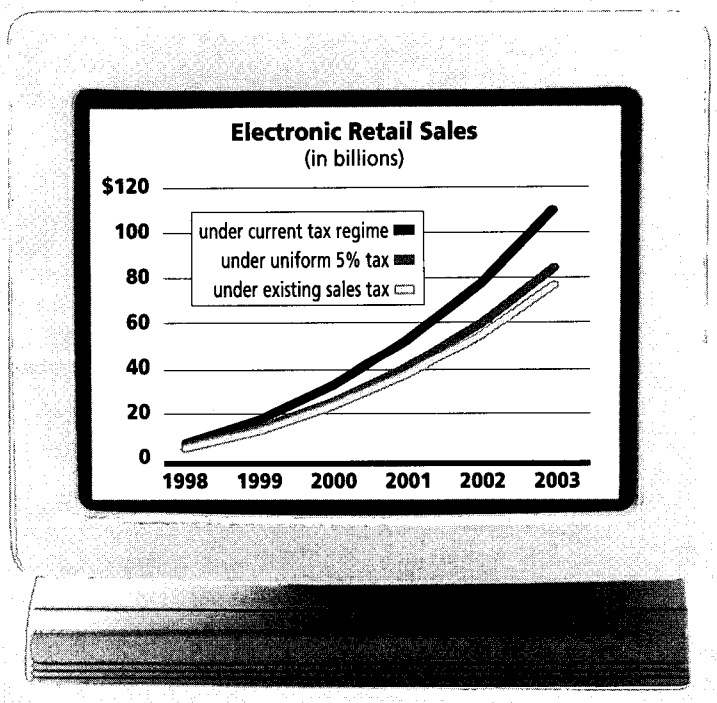
DATA

Net Taxes

By Michael W. Lynch

Last year, U.S. consumers bought $7.8 billion in retail goods via the Internet. This year, according to Forrester Research, total sales will be $18.1 billion, with projected sales ringing up $52 billion in 2001 and $108 billion in 2003. For the millions who've figured out they're just a mouse click and a United Parcel Service delivery away from a new book, shirt, or software package, the Internet has been great news. But some governors, state treasurers, and local officials aren't quite as jubilant. That's because online sales, like mail-order catalog sales, are mostly free from state and local sales taxes (except when buyer and seller reside in the same state). In February, the National Governors Association called for a "twenty-first century tax" that would equally ding "main street, mail order and the Internet."

University of Chicago economist Austan Goolsbee finds that taxing the Internet would significantly stunt its commercial growth. Analyzing data from 25,000 individuals in more than 350 communities, Goolsbee concludes that a uniform 5 percent tax on Internet purchases (widely discussed by tax proponents) would reduce the number of buyers by 18 percent and shrink online sales by 23 percent. Inflicting existing state sales taxes (most of which are higher than 5 percent) would reduce the number of buyers by 24 percent and total sales by 30 percent.



For now, the Internet is safe from any such levies. In 1998, Congress put a three-year hold on new taxes on the Internet and established a 19-member commission to study how government can best support electronic commerce. But when that moratorium expires in 2001, what will happen next is anybody's guess.

Sources: Forrester Research, Austan Goolsbee

Union Crunch

By Nick Gillespie

Ben & Jerry's, the ice cream company, has always prided itself on its lefty bona fides and its devotion to progressive causes. Hence, products such as Peace Pops (part of the profits from which were given to peace groups) and Rainforest Crunch (made with nuts from small agricultural cooperatives in Brazil). The company also offers employees paid family leaves and up to three free pints of ice cream daily.

Lately, however, Ben & Jerry's has been in the news for trying to freeze out union organizers at its St. Albans, Vermont, plant. In fact, the purveyors of a self-styled "caring capitalism" apparently don't care much for unions. Last year, when the International Brotherhood of Electrical Workers tried to organize 19 maintenance workers, management insisted that all of the non-unionized plant's 150 laborers should be allowed to vote on the matter. The IBEW

BRICKBATS

♦ Politicians all over the world are looking for policies that can boost economic growth, and Canadian Industry Minister John Manley says he's found a winner: raise taxes. "High tax levels... should increase productivity because it would drive innovation in order to lower other costs," he said. And that innovation should raise productivity, which should raise growth. Next up, no doubt: A proposal to spur economic activity by burning down existing businesses.

♦ European gourmets may have to do without one of their favorite delicacies, foie gras. A study for the European Commission has suggested banning the dish, which comes from the livers of ducks and geese that are force-fed through a tube. The study said "force feeding as currently practiced is detrimental to the welfare of the birds." Of course, the killing and eating of the birds would seem to be even more detrimental to their welfare.

♦ Obviously, the French aren't too happy about the prospect of a world sans foie gras. But they may not notice, as they're so busy banning things on their own. The government has barred the purchase, acquisition, and importation of "attack dogs," particularly pit bull terriers. Any such dogs already in France will have to be sterilized. The government hopes to completely eliminate the breed from France within 10 years.

—Charles Oliver

Chip Bok

charged that such a move was a transparent attempt to "dilute the vote" and filed a grievance with the National Labor Relations Board, which agreed with the union. In January, the maintenance workers voted 11–8 in favor of the IBEW, becoming the first union employees in the company's 20-year history.

So don't expect a "Union Crunch" flavor to join the ranks of Cherry Garcia and Chunky Monkey anytime soon. This isn't the first time the company has had a public relations meltdown tied to its professed ideals. A few years back, founders Ben Cohen and Jerry Greenfield held a highly publicized write-in contest to select a new CEO, which they ultimately abandoned in favor of using a corporate headhunting firm. To make matters worse, to cinch that hire, they broke their rule of never paying the highest-compensated employee more than seven times the wage of the lowest.

25 YEARS AGO IN REASON

JUNE 1974 JUNE 1974 JUNE 1974

☛ Free market economists, of course, accurately predicted the results of the attempt to set wages and prices by government fiat—widespread shortages, distortions of production, and in the end, continued inflation. But it has apparently required the actual existence of these results over an extended period of time to convince business and labor leaders to speak out, and to convince the politicians that being against controls could be politically acceptable.

—from "An End to Controls"

☛ For many years newspapers remained silent as the Fairness Doctrine was imposed on broadcasters. We... hope the magazine industry won't stand idly by while a new fairness doctrine is imposed on newspapers—because magazines are the next logical target. And we would like to take this opportunity to state publicly that should such a law be proposed we would fight it, and should such a law be passed, *we will ignore it.* This magazine belongs to us and to nobody else. To be forced to give space in *our* magazine to parasitical fascists like Richard Nixon and Henry Jackson would be the worst kind of obscenity.

—from "No 'Right' to Reply"

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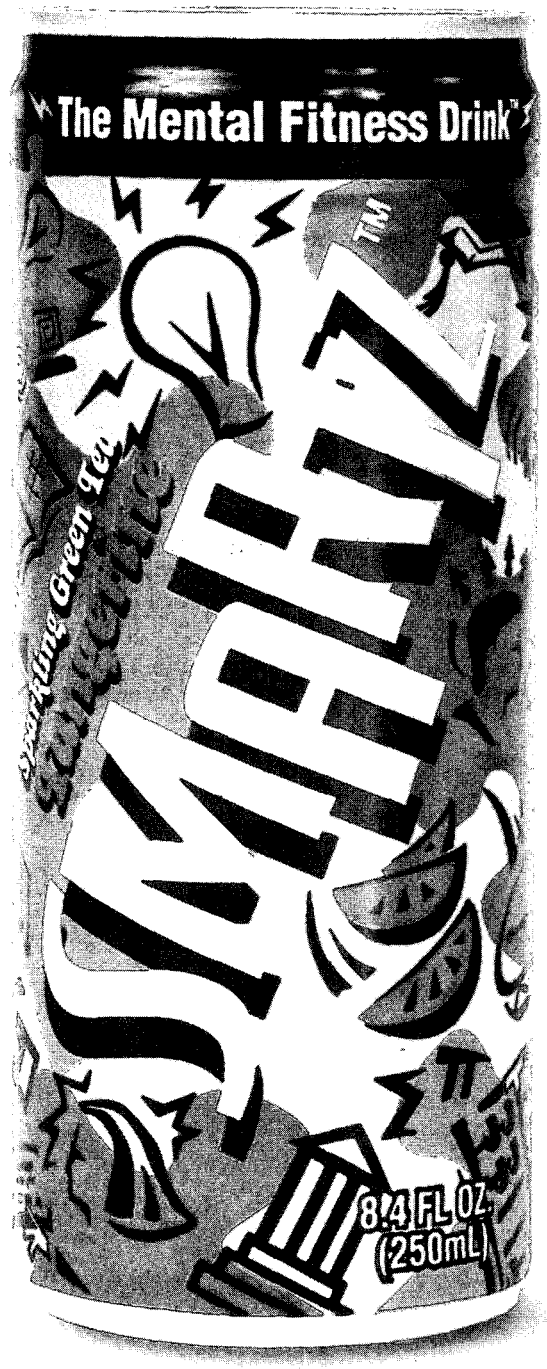

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Sermons on the Hill

In which our man in Washington checks out various political preachers

By Michael W. Lynch

Date: Thurs, March 18, 1999 7:15:17 PM
From: mlynch@reasondc.org
Subj: The Radical Rabbi's War

Everything in life—politics, art, culture, family relations, economic order—flows from the answer to this question: Where did human beings come from? "There are only two potential answers," Rabbi Daniel Lapin, president of Toward Tradition and author of *America's Real War*, told about 15 Washingtonians gathered at the Heritage Foundation Tuesday night.

One possibility is "over billions of years, in a process of unaided materialistic evolution, we evolved from primitive protoplasm into Bach and Beethoven," a proposition that elicited muted chuckles. "The other answer is God created us in His image and breathed the breath of life into us and made us the pinnacle of creation and put us on Earth." Rabbi Lapin continued, "How you run your life, and how you choose and make decisions throughout your life, flow directly from this." And, the rabbi contends, which side you choose in America's next civil war will hinge on this as well.

Politically active religious conservatives have been a bit down lately. Impeachment didn't go their way, prompting the coiner of the phrase "Moral Majority," Paul Weyrich, to declare that there is no such thing. Introducing Lapin, the always intense Joe Loconte, Heritage's William E. Simon Fellow for Religion in a Free Society, pointed to a post-impeachment *Wall Street Journal* op-ed by former Christian Coalition chief Ralph Reed as evidence of decline: "This is what Ralph says about the whole moral agenda in a 1,300-word oped: 'Moral issues will require consistent attention. Not election-eve histrionics.'"

But Lapin, who was scheduled to speak on "Beyond Affluence, Decadence and Depravity: Focusing on the Road Back," is optimistic. At first it wasn't clear why.

A skilled orator, Lapin spent his first 10 minutes comparing the march of liberalism to that of Hitler's Europe and Japan's Pacific. "The left has managed to avoid waking the sleeping giant of American conservatism," said Lapin, after explaining how Hitler had done the same with France and England until it was too late. "It has taken victory after victory, gain after gain. It has managed to dominate stage by stage each and every institution of American society, until we look a lot like the Pacific looked before Gen. Douglas MacArthur began his return. Every island in our culture is held and dominated by the left: the schools, higher educational institutions, the courts, entertainment, the news media," he continued, later adding, "And at no stage have we been willing to take it seriously enough to go to war over it."

As I listened to Lapin, drinking my Coors and taking notes, two thoughts rambled through my head: This guy spends a lot of energy on war metaphors—and I hope they are metaphors—and his picture of America sure is bleak. I couldn't quite locate his optimism. But then he told us straight out: He's optimistic because good Americans, those who pick the second answer, at last know there is a war. "There is a war," he said. "And the war is between the people who recognize that there are two different Americas."

Only two? Yes, two. "There are two nations occupying the same piece of real estate. There is the America that listens to Tom Leykis and Howard Stern. And there's the nation that listens to Christian broadcasting, Dr. Laura, and Rush Limbaugh." To whom one listens, and few listen to both, is determined by the fundamental question: "Are human beings unique God-made creatures, or are they sophisticated animals?" Lapin recognizes there's a spectrum but claims the center is getting thinner and thinner, as Americans sort themselves based on their view of how they got here.

I found myself getting a bit nervous as the rabbi posed rhetorical questions. He said that we were among friends, but I began to feel like an unwelcome ambassador, perhaps a spy or an infiltrator, from the other America. And this was even before he posed the "Where do we come from?" question, which didn't emerge until the last third of his hour-long speech.

Lapin offered a choice of crowded elevators: "You are about to be stuck in a small elevator for eight hours with seven other people. You may choose if you want it to be with seven people with *Hour of Power* from Jerry Fawell or seven people from the audience of Jerry Springer. That's your choice. Which Jerry do you want?"

Obviously, one doesn't like either option—even Jerry Seinfeld would be better. But Lapin said we had to choose. And, I must say, I would take the Springer elevator: It holds more possibilities.

Stern or Dr. Laura? Not even a choice. So too with the rabbi's other question: "Would you prefer to live in parts of this country that bear the stamp of 35 years of left-wing socialistic experimentation? Or would you rather live in parts of this country that are still considered the Bible Belt of America—what I consider its safety belt?" I say unbuckle that belt and send me, by bus even, straight to San Francisco.

Lapin's speech was eclectic. One minute he was trying to make sense of a world where the "most appalling and gruesome

HENRY PAYNE

concoction of unrestrained and unlimited pornograph[y]...*Pulp Fiction*, for instance," could exist alongside "the most beautiful and uplifting and noble Jane Austen movie." The next minute he was explaining, based on the answer to the central question, why public housing is uniform; why nonbelievers, if not "selfish bastards" or "thoroughly, horribly depraved," will be redistributionists; and why farmers are entitled to all of their cows' milk.

He also kept getting back to war, which made me and at least a few others in the room nervous. "I am absolutely convinced that God is far from finished with the story of the United States of America," he said by way of summation. "First of all, [there's] the matter of the little battle that must be fought, just as it was in the 19th century." There were, and are, "two incompatible moral visions for this country. We had to settle it then. We're going to have to settle it now. I hope not with blood, not with guns, but we're going to have to settle it nonetheless. The good news is that I think our side is finally ready to settle it. Roll up its sleeves, take off its jacket, and get a little bloody. Spill a little blood. We'll settle it. And we'll win. And then there's no holding us back."

Loconte, no religious or political squish, questioned the wisdom and morality of viewing one's political adversaries as "mortal enemies." The rabbi had a ready response: Liberals aren't evil, since they have good intentions based on a faulty premise, he reasoned. But that "doesn't mean I won't have to kill you," he said to nervous laughter, "because this is a war."

My beer drained and plate empty, I decided to leave before my earrings became the focal point in somebody's crosshairs.

Date: Thurs, March 25, 1999 10:37:44 PM
From: mlynch@reasondc.org
Subj: Gore Stumps

Vice President Al Gore, after starting the year off with a promising policy agenda of enlisting the federal government in the fight against detached, single-family housing, has gotten himself into a few traffic jams on his road to the American presidency. He is committing gaffes of potato-head proportions, and polls have him trailing George W. Bush by 18 points.

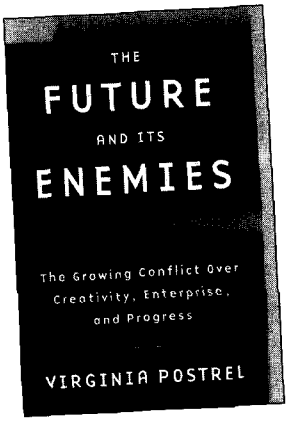
All this stumbling pleases Republicans, but I think they are underestimating the man, just as they underestimated Clinton over and over and over again. So I'm betting on Gore, not because I want him to be president, but as a hedge, an argument stopper, and a conversation starter. To date, I have $150 at stake.

On Tuesday, Gore was delivering the keynote address at the annual dinner for the Joint Center for Political and Economic Studies, a Washington think tank that focuses on African-American issues. I signed up. I wanted to check out my horse.

When I told people where I was going, the response was universal: "That sucks. I feel sorry for you. I hope you survive." I brushed off the comments, as an anthropologist headed into the bush might brush off concerns about exotic diseases,

"Brilliant"

—James K. Glassman, *The Washington Post*



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threats of decapitation, and lack of air conditioning. This was research. My goals: to see if Gore is as bad on the stump as everyone says; to hear what he says to this particular audience; and to witness how he's received.

The report: He's as bad as everyone says. He's a charisma vacuum, the verbal version of the famous *American Gothic* painting.

When he's on script, he reads so quickly that he forgets to pronounce all the syllables. He's even worse when he ad-libs, which he did a great deal. He's never sure of the proper accent to affect. At some points, he fell into a Southern drawl. But he never stuck with it. It was as if he suddenly realized he wasn't talking to a room full of Tennessee tobacco farmers, as he was in 1988, when he bragged about his tobacco-farming prowess— "I've hoed it. I've dug in it. I've sprayed it. I've chopped it. I've shredded it"—but to the descendants of many of those who actually hoed it, dug in it, and chopped it, and not as a diversion from prep school.

At other times, his script called for soulful phrases, but his delivery lacked rhythm. He opened, for example, by noting that the Joint Center was a force for "justice and righteousness," but he read the line so fast I don't think he even accented the right syllables. At another point, he explained the God-given mission of the United States, mingling Clinton's foreign policy with the prophet Amos. "In every one of those lands I've mentioned, especially in Kosovo, people look to the United States for a kind of hope that justice will come rolling down like mighty waters," Gore said, each word picking up speed but devoid of any particular emphasis.

I kept thinking, and writing in my notebook, that I want my bets back. As I sat through the speech, drinking glass after glass of Stone Pine Chardonnay, I just couldn't believe how horrible he was. And two days later, looking at both the text of the speech Gore's office faxed me and my transcript of what he actually said, I am struck that neither version of his remarks reads as poorly as it sounded. This is remarkable. Usually the spoken word pleases the ears yet pokes a bit at the eyes.

Consider this story Gore told as a way to connect with the predominantly black audience. "We are one of the most successful administrations in what we set out to accomplish in the history of the country because of our diversity," Gore boasted to big applause. He then took a trip to Hollywood. "One movie that came out a few years ago was a movie called *Grand Canyon*," he said, now completely off the script his office sent me. "It was a movie about the gulf between rich and poor, between majority and minority. There was scene that has really lingered in my mind. A character played by Danny Glover is helping an acquaintance played by Kevin Kline there in South Central Los Angeles at night. And there are scenes of disorder all around them. A siren wails in the background. A scene of violence is evident on the other side of the street. The signs of poverty are everywhere; windows and doors are boarded up. Litter. Scenes of urban devastation. And the character played by Danny Glover looked up and in a poignant moment said, 'You know, it's not supposed to be this way.'"

Written down, it sort of makes sense. But out of his mouth, it was just a series of sentences. It was painful to listen to. The audience sat waiting for a summation, a point, the way a novice dancer might anticipate a cue from her lead. Gore never provided such a cue. He earned no applause. From a presidential aspirant, it's not supposed to be this way.

After a significant applause drought, Al Gore got some claps when he promised to "finish up quick, so the dinner shift can start." But even here he didn't deliver.

Gore's formula was simple: Recognize progress, but dwell on the negative, which points to the need for more government action. For example, after stating that blacks and whites graduate from high school at the same rates, he shifted his focus to problems facing African Americans. He got particularly riled up that the average black family has but 10 percent of the wealth of the average white family.

"It reflects injustices of five generations ago," said Gore, his voice now showing a bit of passion, which garnered him a bit of applause. Gore continued: "If you start with the family wealth that is not just 10 percent less, not just half, but one tenth the average family wealth in the majority community, then business formation and entrepreneurship has more of an obstacle to overcome." Not bad on paper. But he delivered it in such a blockheaded fashion that it was met with polite silence. This man just doesn't groove.

After a significant applause drought, Gore got some claps when he promised to "finish up quick, so the dinner shift can start." "Amen," said a UPI correspondent sitting two spots to my right. But even here he didn't deliver. He still had America's mission to get to, he hadn't yet held forth on the wealth gap, and South Africa still needed addressing.

"We know we're making progress," he said, starting his wrap-up, a failed attempt to emulate the rhythm and intonation of, let's say, Jesse Jackson. "We know how much farther we have to go. And we know that the kind of business investments and practical uses of prosperity and economic progress represents one of the greatest assets we can possibly cultivate in order to give ourselves the momentum we need to get on over that edge, to get on beyond that division, to get on with creating what we are intended to be in this country, to make it the way it is supposed to be."

I thought he sounded ridiculous. I asked the woman next to me what she thought. A student at Hampton University interning for Scripps Howard, she said, "I'm going to vote for him," but soon caught herself, recalling her lessons that journalists are supposed to be objective. All the fellow from UPI would say is, "He's running for president. What can I say?"

Needing something to soak up the wine, I stayed through dinner before heading home.

Date: Wed, April 14, 1999 4:18 PM
From: mlynch@reasondc.org
Subj: Mandate for Leadership

Pay attention, fellow Generation Xers. There's yet another group of your peers telling the world what you think. This time

they come with a "covenant."

I got the word via a faxed media advisory notifying me that "fifty representatives of the 'best and brightest' of Generation X" will release a report called *The Content of Our Character* at a town meeting on Thursday, April 8. The release was on the letterhead of the Kenan Ethics Program of Duke University. The report, the advisory promised, is a "thought-provoking vision and commentary on the American landscape." I set out to cover this momentous release.

Six hours before the event, I received a five-page teaser on the covenant. "We must educate our peers, our children, and our children's children [for all the Gen X grandparents out there] about the importance of civic engagement," this fax declared. "With hope and confidence, we look to our peers and our successors to carry out the vision that has already begun." Vision that has already begun?

In addition to canned rhetoric, the fax tapped many liberal bromides. It endorsed the McCain-Feingold speech restrictions, a.k.a. campaign finance reform; called on corporations to give away more of their owners' money and spend more on environmental initiatives; and endorsed government day care that "promotes experiential learning during the first five years of life."

I investigated the associated Web site, www.contentofourcharacter.org. The "best and brightest" of my generation, it turns out, have discovered something called "right-minded capitalism," which means corporate do-gooder giveaways. They also want to "capitalize our leadership and our belief in a divinity of spirit." Gen X leaders must "strive to be selfless." According to my peers, "human dignity" not only requires "fundamentals such as health care, education, shelter and subsistence, but it should also mean access to attentive physicians, viable public schools, adequate housing, and healthy food." Why not slender flight attendants and courteous waitresses?

The advisory had billed the event as a "town meeting," yet the location wasn't some community center, or even a classroom at the University of the District of Columbia. Nope. It was the House Science Committee Room, easily accessible to Hill-based reporters. These folks weren't an expedition of Gen Xers in search of truth but a bunch of young Bill Clintons and Ira Magaziners.

I was among the first, and last, to arrive. At about 4:10 p.m., the panel assembled to address the crowd of about 10 reporters. Gregg Behr, the Duke law and public policy student who edited the report, proceeded to explain its origin: A group of Truman Scholars, toiling in D.C. during the summer of 1995, thought they had a vision to share with the country. In August 1998, they convened a group of 50 people in Durham, North Carolina, to continue the bull sessions. After many debates, they decided they shared a set of common ethical principles. They then spent months writing, faxing, and e-mailing what they now regard as a "covenant."

The "best and brightest" of my generation, it turns out, have discovered something called "right-minded capitalism," which means corporate do-gooder giveaways.

Gregg is definitely an operator, and he appears to have political aspirations. He wore a permanent grin and spoke in an ostensibly soothing tone, a quiet voice that conveyed his deep compassion but nevertheless grated on my nerves. He's like a male kindergarten teacher, day care provider, or coach of young children who, in the face of child rage, kneels down on one knee, places his hands on a child's shoulders, and counsels: "It's OK to be mad, it's OK to cry when you're angry, it's OK to be upset when your feelings are hurt or when someone steals your ball or calls you names, but it's not OK to cuss out the person or punch him and take your ball back."

Next up was Maggie Super, a Yale graduate now studying city planning at MIT. Maggie discussed the report's community section, which she claimed was "iterative and inclusive." She was followed by Mollie Finch, who edited the political section. Mollie said her diverse group of 10 couldn't agree on any policy issues. Instead, she claimed they agreed upon values—working for the common good, honesty, courage, and "inspiring through vision." Honesty is particularly instructive.

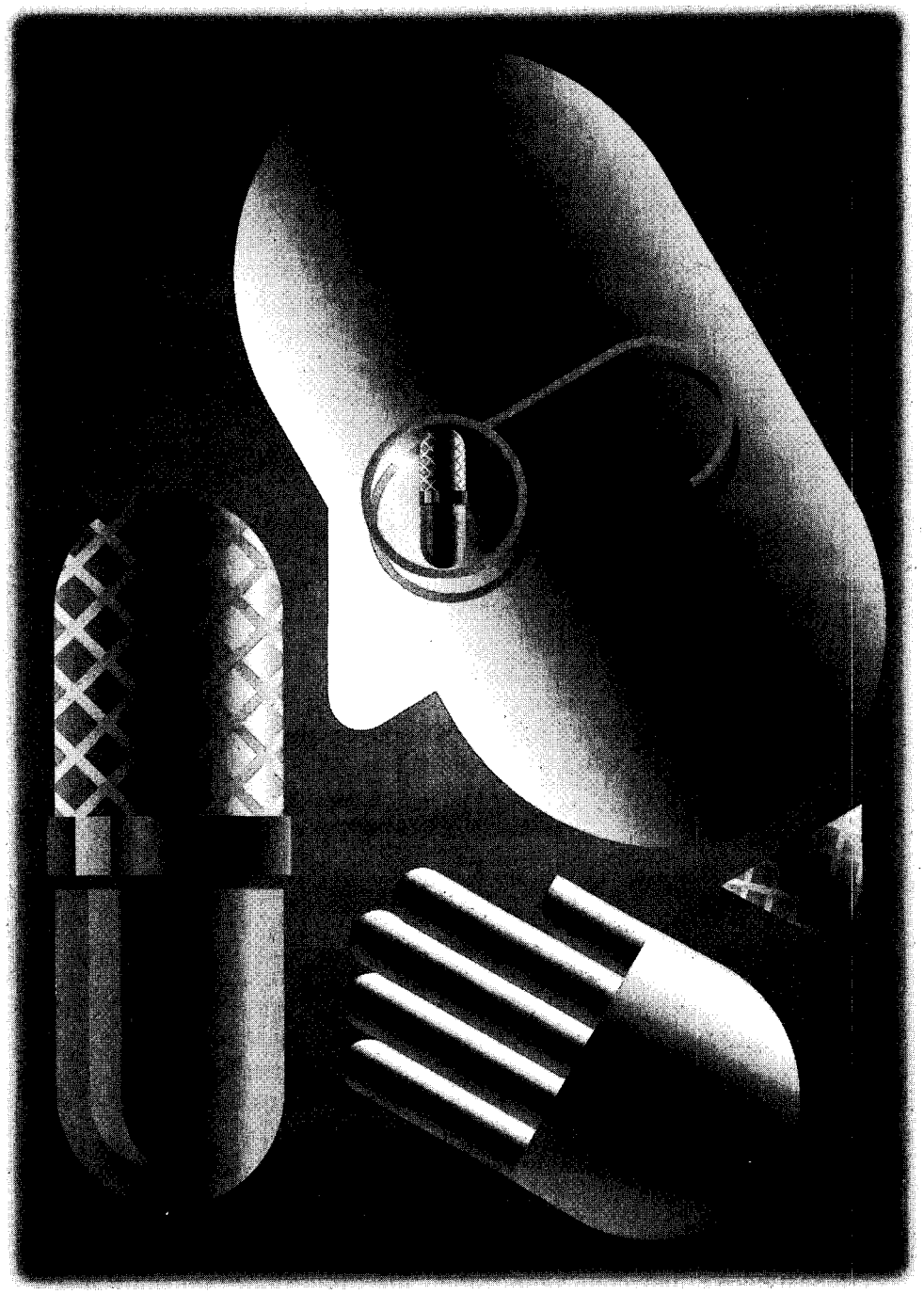
According to the report, "an honest leader always will have pure motives, while maintaining a true respect for the rule of law and the best interests of the public." Yet the report never mentions by name our commander in chief, who has been held in contempt of court for lying and stands credibly accused of rape. After the presentations were done and Gregg had finished thanking everyone he's ever known in his life, I asked how Clinton's behavior fit with their emphasis on character and honesty and questioned why the report never mentioned him. Gregg said the report was about future leadership and that people had different opinions on the president's behavior.

Maggie feels the conversation on honesty has "become very narrow." It has been framed, after all, as being about telling the truth under oath and telling bald-faced lies to the American public. "We may have lost sight of the fact," Maggie instructed me, "that moral leadership and ethics have a whole number of issues associated with them that are in fact fundamentally more important for a civil society and a culture." She asked, "Is it ethical that kids don't have enough to eat?"

I edged in one more question: "What would you say to Generations Xers who perhaps don't find their views reflected in your document? There may be a segment of Generation X who believe that McCain-Feingold trounces all over free speech, instead of holding politicians accountable; that might feel that corporations pursue their values best when they pursue their profit motive wholeheartedly, an ethical position that has been out there for some time; and that might feel more environmental regulation isn't the way to go."

That got to the crux of it. Horacio Trujillo, a Truman and Rhodes scholar who serves as a legislative assistant for Rep. Tom Udall (D-N.M.), admitted that some in the group felt exactly like this. Gregg said no one who worked on the report actually agrees with its conclusions, just with the universal values that inform it. I guess the sentences just sort of sound good together. Some covenant.

RADIO WAVES



The FCC may change the way it licenses stations. But even if it does nothing, radio will never be the same.

American radio is very capitalist, in the crude sense of the word: The industry is a busy bazaar, rife with deal making, speculation, and scrappy hustlers trying to get rich quick. It is also very socialist, in the crude sense of the word: It has long relied on the government to protect its biggest players, shore up their profits, and ensure that the competition doesn't get too unruly.

And so, when the National Association of Broadcasters (NAB) held its annual Radio Show in Seattle last October, the trading floor was abuzz with the sound of entrepreneurship. Salesfolk hawked prefabricated jingles, syndicated shows, new technologies, and more, creating a capitalistic din. Upstairs, experts lectured broadcasters on how best to get government off their backs, leading seminars with such titles as "Employment Law and Protected Groups" and "Running Successful Contests, Promotions and Casino Spots—Without Being Fined by the FCC."

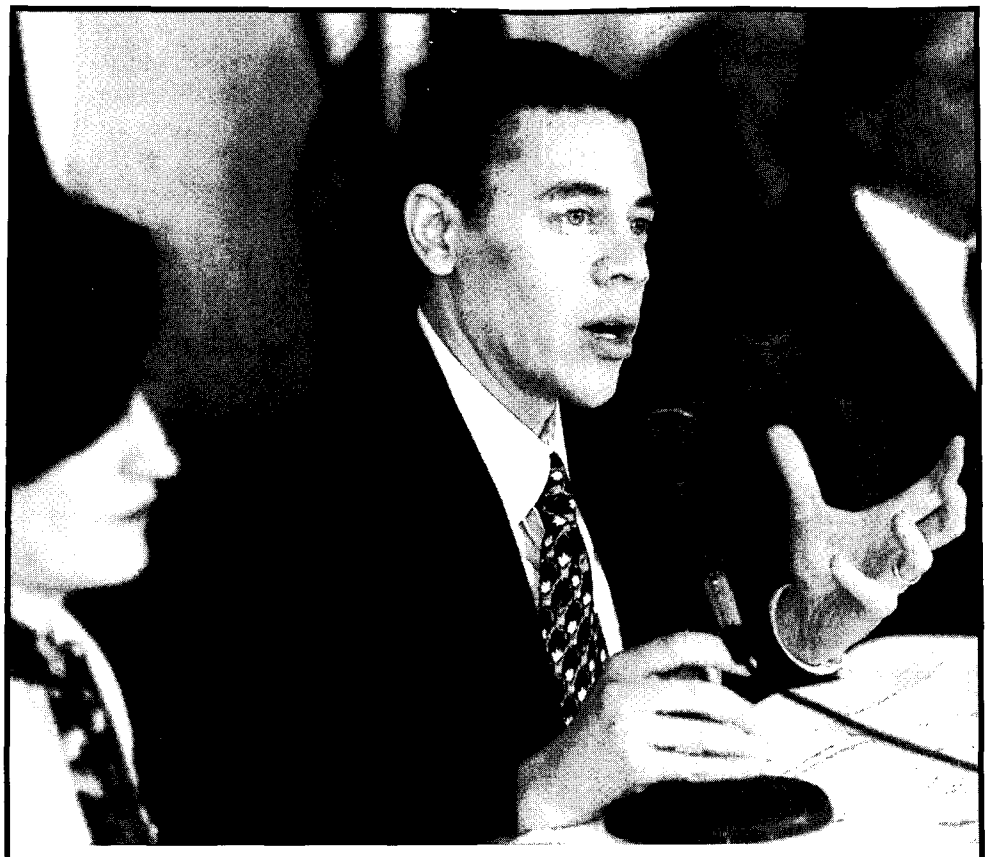
Except once, on Thursday afternoon, when the talk turned to how best to get government *onto* certain broadcasters' backs, lest they hurt their competitors' bottom line. Up in Room 609, the conventioneers urged the Federal Communications Commission to crack down even harder on micro radio operators, those unruly, unprofessional populists who run their low-budget, low-power stations without permission from the government. And to please, *please* forget this notion that FCC Chairman William Kennard had been tossing around, this idea of actually creating a legal micro radio service.

Right now, you see, the FCC won't license new stations of less than 100 watts, a policy that reduces room for new broadcasters on the dial. What's more, to get a license, one must spend thousands of dollars maneuvering through the commission's bureaucracy. Over the last decade, a growing number of people have simply ignored these barriers and gone on the air anyway, to the displeasure of both the FCC and the NAB.

Meanwhile, mainstream American radio has operated on the assumption that bigger is better—that to survive, it must become a tight clan of consolidated chains offering formulaic formats. A series of buyouts has swept through the industry, with the number of station owners shrinking by more than 700 in less than three years, leaving four corporations in control of more than 1,000 stations nationwide. The trend is even more pronounced in the nation's largest markets, where it's not uncommon for a handful of companies to own almost all the commercial outlets in town. This being American radio, the wave of mergers reflects a combination of crude capitalism and crude socialism: People

By Jesse Walker

ILLUSTRATIONS: DON ARDAY



Micro Booster: FCC Chairman William Kennard opposes unlicensed broadcasting but believes micro radio might counteract recent trends toward consolidation and up the number of minority-owned stations.

AP / WIDE WORLD PHOTO

are making a lot of money, but in a way shaped by the state, which has eased restrictions on combinations while making it steadily harder for startup stations to challenge the chains.

This consolidation began as a desperate effort to stave off financial disaster. As the '90s began, more than half the radio stations in America were losing money. Many were going dark—the industry's poetic term for leaving the air. The conventional wisdom blamed this on Docket 80–90, a Reagan-era rule change that had loosened the restrictions on how many operations could co-exist in one market, opening the FM dial to 689 new outlets. With so many stations competing for advertisers, the price of airtime fell, and so did broadcasters' profits. Stations were dying, the argument went, because they couldn't handle all the competition; the solution was to license fewer stations and let existing owners consolidate their holdings.

So the FCC reversed itself: Rather than allow more stations to enter a market, it would allow existing station owners to own more stations within a market. (The notion of allowing *both* was never on the table: Few in the FCC are enamored with laissez faire.) In 1992, the commission legalized "duopolies"—that is, it allowed owners to control two stations in the same city. (This is an eccentric use of the word *duopoly*, but it is standard within the industry.) Further changes to the rules followed, culminating in the Telecommunications Act of 1996, which among other things allowed companies to own an unlimited number of stations nationwide and as many as eight in most markets.

The swelling chains began forcing advertisers into must-buy deals, whereby to get a plumb spot for a commercial on a popular station, an advertiser must also buy time on one of the chain's other outlets as well. Between that, increased automation, and the booming national economy, profits quickly rebounded, with revenues steadily increasing from 1992 on.

At the same time, paradoxically, listenership fell through the floor. According to the analysts at *Duncan's American Radio,* a leading industry newsletter, the percentage of people who actually listen to the radio has been steadily declining since 1989. There was a slight uptick in the early '90s, thanks largely, they suspect, to the boom in talk radio. But that soon reversed, and listenership has now hit a low unseen since 1981. The *Duncan's* analysts attribute the decline to the trend toward extreme format segmentation, the converse loss of several once-thriving niche formats, the decline in locally oriented programming, the increase in the number of commercials per hour, and the simple fact that, when two rival stations share an owner, they devote less effort to promoting themselves.

It can't be long before the admen start to figure out that they're paying more to reach fewer people, and start either demanding lower prices or taking their business elsewhere. Meanwhile, the radio mainstream will soon face competition from both the grassroots and the skies. On one side, the micro outlaws are offering everything that most radio no longer delivers: genuine localism, eclectic music, politically charged debates. On the other, a new satellite service is poised to take the standardized, placeless programming that dominates the AM and FM bands and do it better, with more options, more listening convenience, and no ads. In a few more years, Internet radio may start to do the same.

Oh, yes; there's one more thing. In the past, when serious competition threatened established broadcasters, the feds were able to hold off the hordes. FM was almost strangled in its infancy; cable TV was delayed for decades. And the government got away with it, because the constituency for a broadcast service that doesn't exist yet is, by definition, minuscule.

But this time, hundreds of micro radio stations have already gone on the air illegally, building audiences and inspiring other would-be broadcasters to do the same. They've become a full-

fledged political movement, with a membership that ranges from Panthers to Promise Keepers, from rappers to honky-tonkers, from farmers in the Great Plains to Jamaican immigrants in Florida. Micro radio has a constituency, one that has gathered support from several city councils, a state legislature, at least 28 congressmen, and—in a limited but still astonishing way—from the chairman of the FCC itself.

In this atmosphere, the great radio chains—the empires of the air—will have to change themselves radically or die. American radio isn't just standing at a crossroads. It's standing there with a ton of bricks falling toward its head.

It is a matter of faith at the National Association of Broadcasters that the radio band is far too congested to allow new stations onto the air, that there is scarcely enough room for the signals already being beamed. Its engineers have devised some complicated arguments for this stance, but I suspect the doctrine's origins may be more cultural than technical. Wading through the mob at last year's Radio Show, I caught more carelessly swinging elbows, arms, and bags than I would in any ordinary crowd. *These broadcasters can't even share a room without ramming into each other,* I realized. *No wonder they don't think they could share an electromagnetic spectrum.*

In Room 609, attorney John Fiorini made the NAB's case against a legal micro radio service. It would create too many additional stations for the FCC to regulate, he argued, declaring that the agency was stretched thin as it was. What's more, the new stations might block the shift to digital radio, the new service in which broadcasters will use a lot more bandwidth to broadcast CD-quality signals to drivers, office workers, and other listeners in no position to notice the difference.

Above all, the stations would interfere with existing broadcasters' signals. "It simply cannot be done in the AM and FM bands," he declared, "without causing grave interference to existing stations. With 12,000 radio stations licensed in this country, broadcasters don't need to be told how congested the spectrum is."

There are, in fact, many ways to squeeze more stations onto the dial without causing more interference. We'll look at a few of those later. For now, let's pause a moment to flash back to 1922, to the first national radio conference organized by Secretary of Commerce Herbert Hoover. There, L.R. Krumm of Westinghouse complained that it was "perfectly possible to establish a so-called broadcasting station for about $500 or $1,000 initial investment." What's more, such outlets' programs consisted of "nothing but phonograph records, and that sort of station can interfere very disastrously with such a station as we are trying to operate." Krumm added, "I believe 12 good stations, certainly a maximum of 15, would supply most of the needs of the country."

Despite the NAB's objections, on January 28, 1999, the FCC went ahead and issued a Notice of Proposed Rulemaking on micro radio. In plain English, that means it drafted a proposal for a micro radio service and asked for public comments on it. All three Democratic commissioners voted for the notice, with one Republican joining them and another casting the lone dissenting vote.

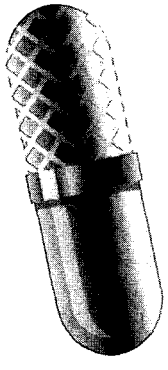
Two years ago, this would have been unthinkable. But three things had happened in the meantime:

■ The FCC's crackdown on unlicensed stations, which intensified in late 1997, brought more media attention to the micro movement, almost all of it positive. Meanwhile, the pirates defiantly declared that they'd put 10 more stations on the air for every one the government shut down. Not all the promised stations managed to materialize, but it was still clear that the feds were unable to snuff out piracy. (The FCC will periodically announce that there are only 80 unlicensed operations left in the country, or some similar number, but those figures are unreliable to the point of uselessness.)

■ The FCC's new chairman, William Kennard, decided he liked the idea of micro radio. He still opposed unlicensed broadcasting, naturally—indeed, the current crackdown began on his watch—but, he reasoned, a new microbroadcasting service would counteract the recent trend toward consolidation. It might also reverse the decline in the number of black-owned stations, a concern important to Kennard, the FCC's first African-American chairman.

■ The task of crafting the new service fell not to the Mass Media Bureau but to the Office of Engineering and Technology. The former is dominated by broadcast interests. The latter is run by engineers, and if it sometimes tends to be overly enamored with centralized management of the spectrum, it's also less beholden to companies seeking protection against competition.

Of course, there are other institutions in Washington of which that cannot be said. Already, one of the industry's best friends



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in Congress, House Telecommunications Subcommittee Chairman Billy Tauzin (R-La.), has asked Kennard to dump the proposal. "The policy, political, economic and budgetary ramifications of this undertaking are potentially staggering," he wrote the commissioner, adding that Kennard should not "proceed" without first "consulting with Congress." A day later, Tauzin reiterated his position in a speech before the NAB, arguing that the FCC has no power to create a micro radio service without congressional authorization—which isn't true—and, amusingly for a conservative Republican, that the new stations might eat into the audience for public radio.

The funny thing is, the proposal that inspired all this apoplexy isn't all that radical. Yes, it would allow as many as 4,000 new stations onto the air. Yes, it would spare them much of the red tape that larger broadcasters face. And yes—contrary to the NAB's refrain—it contains strong protections against interference with existing stations, with one significant exception that we'll examine in a moment.

This has been a long time coming: Starting next year, CD Radio will broadcast 100 channels of music, news, sports, and talk via satellite. You'll be able to pick up these signals anywhere in the country, without static. And without commercials.

But it poses some problems as well. Kennard's plan would create three new classes of stations, one operating at a maximum power of 1,000 watts, one at no more than 100 watts, and one—perhaps—at one to 10 watts. (The last category is more a tentative suggestion than a concrete proposal.) But only the first would be a "primary" service. The others, as "secondary" services, could be bumped by any new station that comes along.

This is especially problematic for the remnants of the FCC's last low-watt service, the Class D stations. These were noncommercial outlets run by schools and nonprofit groups; the FCC stopped issuing new Class D licenses in 1978 and in 1980 reduced the remaining stations to secondary status. A handful of them have survived to 1999. Now they could conceivably be pushed off the air by a wave of 1,000-watt interlopers, even though the old Class Ds have a much stronger claim to the title "micro radio."

Consider WBRS, Brandeis University's eclectic 25-watt station. Under the current rules, says former music director Ofer Inbar, "you can't get a license...that would significantly interfere with us that would not also significantly interfere with nearby commercial stations that do have protection. And with our transmitter altitude, we can cover a bunch of nearby towns. But it sounds like the new rule could kill us off, and we don't have the resources to do anything about it." Inbar likes the idea of a micro radio service but wants his station and other surviving Class Ds to be converted to the new licenses—and given primary status.

All this raises the question of whether the new service is not just too strict but, in some ways, too lax. There is nothing wrong with 1,000-watt stations in themselves, nor with owning more than one broadcast outlet. But it seems odd to refer to a chain of five stations, each transmitting 1,000 watts of power, as a microbroadcaster. If the FCC is going to relegalize low-power FM by creating a special micro radio service, that service should only license micro radio stations. Right?

Some in the micro radio community have already rejected the FCC's proposal. Stephen Dunifer—founder of Free Radio Berkeley, one of the country's most prominent unlicensed operations—calls the commission's plan a "bogus" scheme "designed to invoke the splitting of the movement to reclaim the airwaves." Others fear that commercial stations will squeeze out the listener-sponsored outlets that currently dominate the unlicensed micro radio community. The leftist National Lawyers Guild, which has defended several stations against the FCC, has already filed comments with the commission urging that the new service be entirely noncommercial; in this, they've been joined by two more pro-micro groups, the Prometheus Radio Project and the Micro Empowerment Coalition. (Privately, some of these activists admit that they'd just as soon have a certain percentage of micro radio licenses reserved for noncommercial broadcasters. But they worry that if they don't ask for everything, they'll end up with nothing.)

Another concern, shared more widely within the movement, involves the "character qualifications" for the new licensees. The FCC has suggested that a past in pirate broadcasting might disqualify one from becoming a licensed microbroadcaster, though it also seeks "comment on whether there are circumstances under which such a party could be considered rehabilitated," noting that the "reliability as licensees of parties who may have illegally operated for a time but have ceased operation after being advised of an enforcement action:...is not necessarily as suspect." It's easy to read that as a not-so-subtle suggestion that the commission will give licenses only to pirates who leave the air *now* and risk losing their audience before the FCC finally creates the service. It's also possible, however, that the language was included as a sop to the NAB and won't really be enforced.

All this would be merely a nuisance for the NAB were it not

for the simultaneous challenge of the Direct Audio Radio Service, or DARS. Starting next year, a company called CD Radio will broadcast 100 channels of music, news, sports, and talk from three Loral satellites. Its programming will range from familiar formats (soft rock, hip hop, "smooth jazz," "modern country") to more specialized fare. There will be one channel for *cumbia*, one for *merengue*, one for *boleros* ("the great, timeless Latin standards of song from the '30s–'60s"). Jazz—real jazz, not that "smooth" impostor—will inhabit a channel or two; so will opera, club music, and Tex-Mex. Alternative rock will occupy two channels, one more alternative than the other; blues, reggae, and classic country will have territories too. There will be a children's channel, a gospel channel, a "world beat" channel. Plus 10 channels of news, 10 of sports, 10 in Spanish, and many more. You'll be able to pick up these signals—all of them—anywhere in the country. Without static.

And without commercials. For a $200 startup fee, customers will acquire a small satellite dish and a card allowing their car radios to receive the signals, and then they'll pay a subscription fee of $9.95 a month. CD Radio will thus accrue its profits by selling programming directly to its audiences, rather than by selling audiences to advertisers.

This has been a long time coming: The FCC started the process of allocating satellite-radio licenses back in 1990 but didn't actually get around to awarding them until 1997. Even now, it has devoted such a small portion of the spectrum to the new service that it awarded licenses to only two companies. (The other is XM Satellite Radio, which will offer 50 varied channels of its own, including five for Spanish-speakers, three for Christians, and one for C-SPAN junkies.) But even with such a limited, oligopolistic scope, the new service will be a serious challenge to traditional terrestrial stations, which fought hard against allowing any direct satellite radio at all. In 1994, the NAB released a report, ominously titled *The Truth About Satellite Radio*, arguing that competition from the heavens would put the industry into an economic "free fall." And that, it warned, would have "devastating effects" for local radio and the "community service" it provides.

The DARS companies replied that audiences would still listen to local stations for weather reports, local news, and other regionally specific information; the satellites would be a supplement, not a replacement, for the existing industry. What they didn't mention was just how little localism remains on the outlets they'll be "supplementing," for all the latter's caterwauling about threats to local radio. More and more stations are simply earthbound relayers for automated satellite feeds, and the "local" programming that remains relies heavily on outside consultants and specialized software to tell the DJs what records to play.

It is this trend, more than anything else, that has created a niche for micro radio. Micro stations have covered high school sports, broadcast city council meetings and church services, and given airtime to local musicians; they have trained teenagers and retirees to be broadcast engineers, sponsored concerts and parties, coordinated flood relief, and exposed local corruption and crime. Even the worst micro stations have a ragged vitality that most of their legal competitors can't touch.

The NAB has spewed a litany of "public interest" objections to micro radio, just as it did for satellite radio five years ago; one of its favorite arguments is that the new service would merely "duplicate" existing programming. The broadcasters should be careful what they say. If duplication were the real concern, a public-interest-minded FCC might just wipe out the NAB's outlets, let DARS deliver its nationwide variety packs, and give the entire AM and FM bands to the micro stations.

Little of this is inevitable. The FCC could conceivably reject the micro radio proposal, refuse to expand DARS, regulate Internet broadcasting out of existence, and step up the crackdown against unlicensed broadcasting. (Just this March, San Francisco Liberation Radio got a letter from the FCC threatening them with a $100,000 fine and/or a year in prison if they didn't go off the air within 10 days.) Even if the government adopts the Kennard plan, and even if that plan's benefits end up outweighing its drawbacks, there will still be much, much more that Washington could do—or, rather, stop doing—to allow lively radio to flourish. Ideally, it would forget the idea of a special micro "service" and instead radically reform how the FCC regulates the spectrum.

What would such a plan look like?

It would lower entry barriers. It would permit stations to broadcast at less than 100 watts and would remove the fees and paperwork that would-be broadcasters now must endure. It would also reform the FCC's expensive technical specifications, which were enacted to prevent interference with other signals. On the surface, that sounds sensible, but it's actually inefficient: It would make much more sense just to hold broadcasters liable for any interference they may cause and then, with that incentive in place, let them figure out how they're going to avoid stepping on other signals' toes. Among other things, this would fuel technical innovation, as low-budget engineers strive to build cheaper equipment that nonetheless gets the job done. The present system, by contrast, locks archaic technologies into place.

It would allow frequencies to subdivide. Suppose a station can be heard over, say, 100 square miles. That same area could be served by several stations on the same frequency, if they divided the region into smaller coverage areas with appropriate buffers between them. But under present law, while one can sell a signal, one cannot sell a piece of that signal.

That's not exactly accurate: Technically, the spectrum is government property, and you can't sell a signal you don't own. But one can, with relatively little trouble, sell a license to broadcast over a particular frequency. What one can't do is subdivide a frequency and sell off a chunk of it.

So if our hypothetical station (let's call it KBIG) decides to sell itself outright to a chain (let's call it KRAP), it can. But if it wants to reduce its wattage and let an entrepreneur or civic group take over part of its previous coverage area, it will somehow have to guarantee to the buyers that the FCC will allow them to transmit to the space it has emptied. There is, of course, no way to do this; and even if there were, the application process for the new station would still be long, stormy, and expensive. The risk for the buyers would be too high.

When a giant falls or falters, smaller outlets ought to be able to rush in and take pieces of the electromagnetic ground where he once stood. Instead, the law says he has to sell all his ethereal territory at once, meaning that only another giant can afford to buy it. So the law encourages consolidation, which in turn encourages centralized, automated, prefabricated programming.

It would allow stations to broadcast closer to one another. To avoid interference, there must be buffers between broadcasters. That is why, for example, there are no stations at 101.2 FM—the FCC won't risk interfering with the outlets at 101.1 and 101.3.

No one disputes the need for some policy of this kind. But the current rules are based on the technical standards of the 1950s; it's now possible for far more stations to fit onto the spectrum without interfering with one another. The FCC is already pragmatic enough to allow stations some leeway in bargaining with each other to set the actual boundaries of their coverage areas. It should let them actually sell interference easements, allowing both established and new broadcasters to set up shop at a close-by frequency if they pay for the privilege.

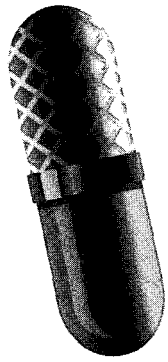
It would open up new spectrum. Anyone who keeps up with both broadcasting and point-to-point communications will soon note a strange contradiction. The broadcasters believe the airwaves are almost completely filled. The phone companies believe the available spectrum is actually expanding: As new technologies make it easier to divide the electromagnetic spectrum ever more finely, for all practical purposes we get more of it.

This conflict doesn't just reflect the fact that broadcast stations cannot compress or split up their frequencies. It reflects the fact that they are limited to two artificial reservations, the AM and FM bands. If the FCC would open more of the ether to broadcasting, manufacturers could sell downconverters—small devices that would attach to or sit near a radio and convert signals sent over other sections of the spectrum.

Such devices are not science fiction: The Philips Clevercast, used for converting data broadcast from satellites, works on a similar principle. So, for that matter, does DirecTV, which lets a TV set built to receive UHF and VHF signals pick up broadcasts made in the SHF band. But if you want to bring down the price of the converter, you'll need a highly integrated device without a high parts cost, and to get companies to invest in developing such a machine, you'll need a regulatory regime that will allow the product to be put to the use for which it was devised. In the pithy words of Bennett Kobb, author of the widely used *SpectrumGuide: Radio Frequency Allocations in the United States*, "Manufacturers will make just about any gizmo if they see a mass market." Until then, Kobb notes, "We're using a 60-year-old technology with FM, and it's creating an artificial scarcity, when we could accommodate for all practical purposes an unlimited class of stations."

The FCC hopes to come to a decision about the micro radio proposal later this year. The NAB and the state broadcasting associations have begun a concentrated lobbying effort to stop it—although there have been some defectors from the fold. On March 3, *Radio World* shocked its readers by editorializing on behalf of the Kennard plan. "Some broadcast supporters," it wrote, "including friends of the NAB on Capitol Hill, argue that new competition will damage the economic prospects of license-holders. Indeed it could, if existing stations don't serve their audiences well. But it's not the job of Congress to protect the economic interests of a certain group of existing broadcasters."

Even as Tauzin pushes Congress to stop the smallest steps toward opening the airwaves, other congressmen—Democrats, mostly—have supported Kennard's proposal. David Bonior (D-Mich.) and 27 other representatives recently sent the FCC a letter endorsing a micro radio service. Several city councils have passed pro-micro-radio resolutions, from towns as small as Salida, Colorado, to cities as big as Detroit. The Michigan legislature, too, has issued a call to start licensing low-power stations.



Perhaps the FCC will listen to the voices calling for change. If it doesn't, of course, the unlicensed broadcasters will persist. And no matter what, satellite broadcasters will soon be active, radically changing the economic face of radio.

Perhaps the FCC will listen to these voices. If it doesn't, of course, the unlicensed stations will persist. And no matter what, the DARS broadcasters will soon be active, radically changing the economic face of radio.

"By adopting a licensed, advertiser-supported, limited-channel broadcasting system," the social theorist Ithiel de Sola Pool wrote in his 1983 book *Technologies of Freedom*, "America has penalized itself for half a century. It has undermined its tradition of free communication, and it has limited broadcasting to mass provision of the few most popular formats of entertainment." We may be—just maybe—on the edge of something better.

Associate Editor Jesse Walker (jwalker@reason.com) is writing a book on micro radio.

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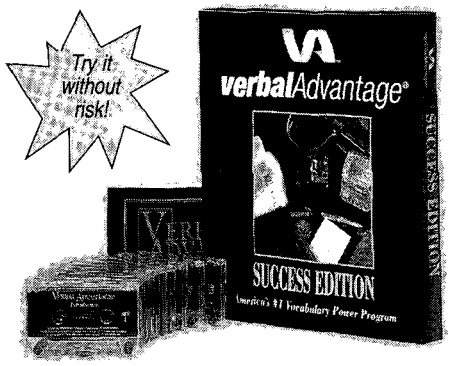

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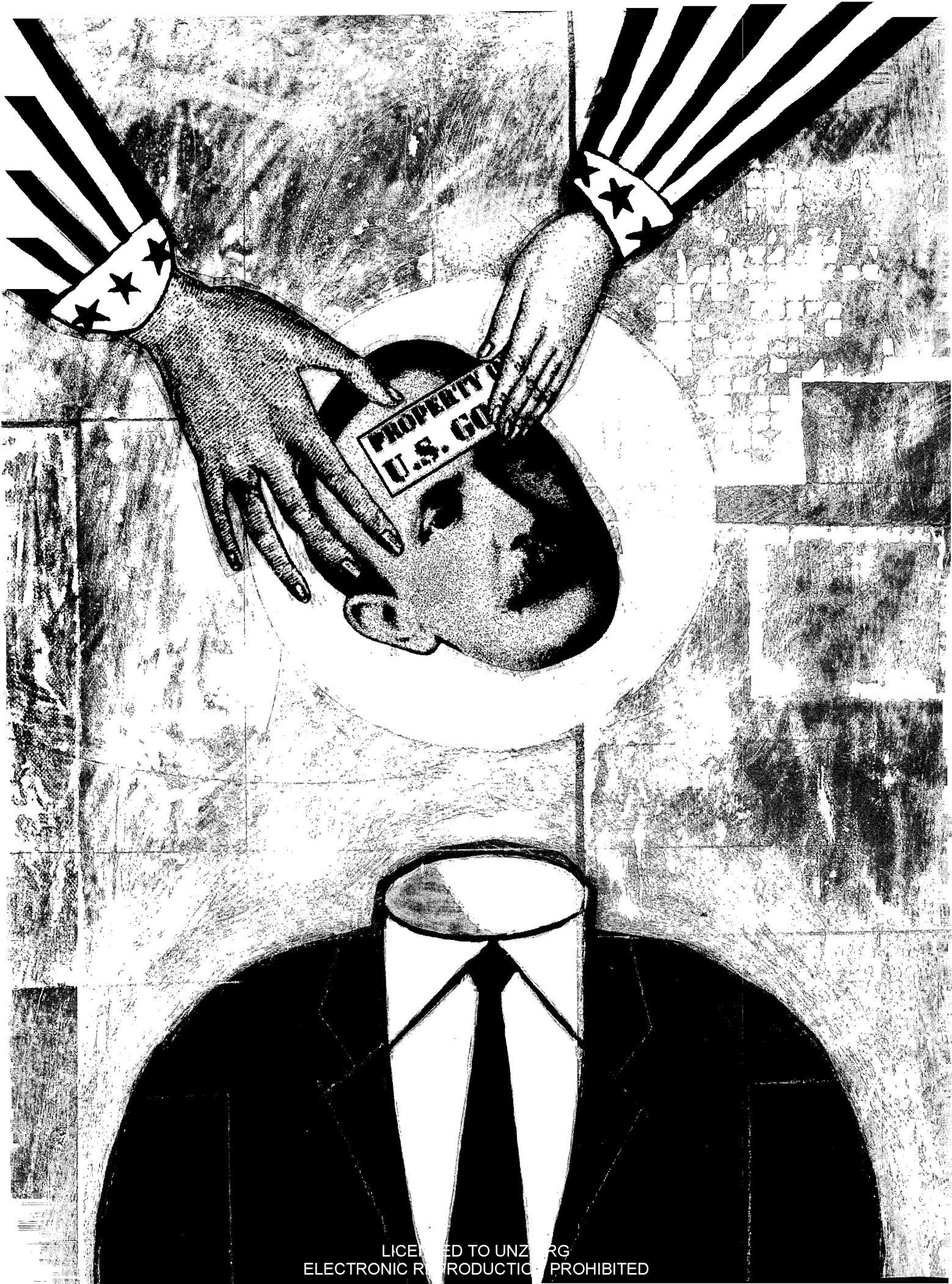

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Taking Back the Fifth

★ ★ ★

As government expands "takings" to intellectual property and other intangibles, will business start to care about property rights?

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In political discourse, *property rights* is the shorthand term for a constellation of legal, political, and moral issues surrounding the treatment of private property by governments. Those immersed in the topic think governments at all levels—local, state, federal, and international—have become cavalier about property rights, not just willing but eager to ignore both the letter and the spirit of the commandment in the Fifth Amendment to the U.S. Constitution that says "nor shall private property be taken for public use without just compensation." As a consequence, an institution that constitutes one of our most important civil liberties, essential to the economic efficiency of our society and to its moral ordering and legitimacy, is being undermined.

Property rights buffs usually focus on problems involving real estate. Examples are easy to find; regular newspaper reading quickly produces a large pile of clips about the use of government regulations to appropriate large chunks of property value. Often the owner is left with the husk of formal title (and the burden of real estate taxes) but stripped of ownership's benefits. Even if the goals are exemplary—stopping pollution, for example, or protecting rare animals—the means, which force a few landowners to pay for something that benefits the public as a whole, are not.

A press gang mentality is abroad in the land. During the Napoleonic Wars, England manned its ships through kidnapping. Anyone who "used the sea" was fair game to be pressed into the navy and sent off on voyages that might last for years. Contemporary environmentalism follows a similar principle: Anyone who uses the land can be pressed into the cause of environmental protection.

See, for example, the April 1 *Washington Times*, which describes the travails of John Taylor, a 79-year-old retired contractor who lives in the District of Columbia. Since his 74-year-old wife uses a wheelchair, Taylor wants to move out of their multistory house and into a single-story home he planned to build on an adjacent lot he owns. But a bald eagle has built a nest on nearby land, and the U.S. Fish & Wildlife Service has decreed a 750-foot no-build buffer around it, despite the fact that 10 houses already exist within the zone. The service is willing to let Taylor build the new home if he contributes $3,500 to a fish restoration program in the Potomac River aimed at increasing the food supply for eagles. The program has nothing to do with the nearby nest, but this is how things work under the Endangered Species Act. Taylor, exhibiting a punctilio of honor badly out of sync with contemporary Washington, refuses, saying: "I'm not going to bribe my government to let me build on my own land."

Other government actions, such as a recent effort to condemn land in Atlantic City so a casino could build a parking lot there, reallocate property rights among citizens. Or they exclude people from the public domain of the West—lands which, under a century-old bargain, the federal government is supposed to administer in a manner allowing reasonable access to citizens of every

★ ★ ★

By James V. DeLong

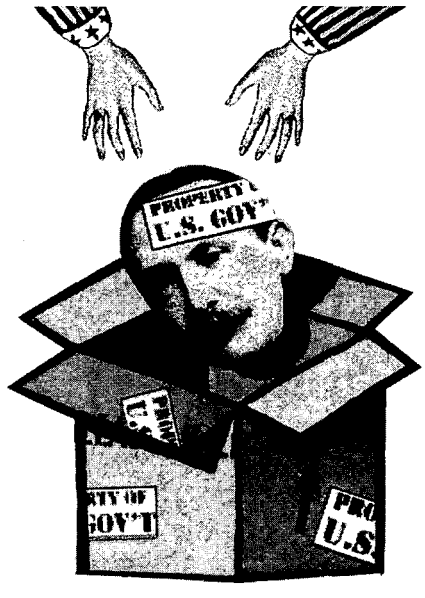
ILLUSTRATIONS: PETER BENNETT

stripe. The new policy is steadily shutting down productive uses of this national commons, eliminating logging, grazing, mining, and recreation.

In recent years, any property rights buff with a mania for piling up news clippings has been forced to add a couple of file cabinets. But the subject matter is changing. The property protected by the Constitution and enshrined in our political tradition encompasses more than real estate. It includes intellectual property such as patents and copyrights, information, business assets, franchises and contract rights, and personal possessions ranging from houses to cars to cash. It includes 401(k) plans, growing like weeds. These are the forms of property that provide the fodder for the latest batch of clips, and this time the involuntary donors include not a just few landowners but some of America's great corporations. As a result, businesses may be waking up to the importance of secure property rights, a shift that could invigorate a movement that so far has met with little success.

Consider some developments that may be prompting corporate America to take a second (or first) look at the Takings Clause:

■ A group of 19 state attorneys general has suggested that the federal and state antitrust action against Microsoft might be resolved by seizing the Windows operating system and making its basic computer code public. This would abruptly turn one of the most valuable chunks of intellectual property in the world into a public commons, as a penalty for actions whose nature and illegality remains unspecified. (See "The New Trustbusters," March.) Nor are the attorneys general alone in their casual attitude toward such property. A recent column in *PC* magazine said bluntly, "Let's nationalize Windows."



■ The Federal Communications Commission has interpreted the Telecommunications Act of 1996 as requiring local telephone companies to make their facilities available to new entrants, at a price based on the hypothetical cost of new, highly efficient technologies. Actual costs do not matter. So an incumbent could wind up eating its investment for the benefit of a rival that has incurred no capital costs and run no risk. In a time of rapidly changing technology, this allows the new entrants to game the system, choosing to share winning investments and sloughing off any responsibility for losing bets. Faced with having their successful investments made into a commons, open to all, the incumbent firms are reluctant to invest, and efforts to promote competition in local service are stagnating.

■ The Pole Attachment Act of 1992 requires utility companies to allow communications firms to hitch lines to their poles. This is a defensible idea, given the monopoly problems intrinsic to rights of way, but it is also an appropriation of property, and it's doubtful that the payments mandated by the FCC represent fair compensation.

■ Under "must carry" rules, cable operators have to transmit without payment the signal of every television station in their catchment areas. Up to a third of channel capacity currently goes to meet these obligations, limiting viewer choice and raising cable prices. For Congress to appropriate one-third of someone's business certainly raises doubts about its respect for property.

■ In response to a lawsuit, the state of Florida argues that the constitutional doctrine of "sovereign immunity" protects it from being sued in federal court for patent infringement, despite an explicit federal law to the contrary. The implication of this position, which the Supreme Court is now considering, is that each state should be free to decide for itself how far, if at all, its government will recognize people's rights in their intellectual property. Florida is supported by 23 other states. Patents, and intellectual property in general, are the crown jewels of the modern business enterprise, so the idea that their integrity and protection could be subject to the fragmented whims of 50 different states makes businesses very nervous.

■ The U.S. Patent and Trademark Office recently stripped the Washington Redskins football team of its trademark protection for *Redskins*, on the ground that it's a pejorative term. The federal trademark statute, which defines the scope of protection given names, logos, and other brand identification assets, excludes names that are "disparaging," but until now this provision has been applied only to new applications. Experts say they have never before heard of an existing mark being canceled after 70 years because it had, over time, come to be viewed as disparaging by some people.

■ In Colorado, the state bar recently beat back a legislative proposal that lawyers be required to devote 10 percent of their time to pro bono work, for causes approved by the state. This may not look like a property rights case at first blush, but think about it. To a professional firm, time is *the* business asset, analogous to capital equipment in a factory or channel capacity in a cable TV system.

■ Electric utilities fear that deregulation of the industry will stick them with unrecoverable ancient costs—incurred, in their view, under government compulsion, in exchange for compensation that is less than "just." The appropriate treatment, legally and morally, of such "stranded costs" is a subject of hot debate.

■ Periodically, proposals surface to divert pension assets into "socially useful" channels—in other words, into channels that benefit politically favored groups. Bank and housing regulators

are already running a program that foreshadows what such a requirement would mean. They allege "discrimination" on the part of financial institutions and then bludgeon them into "community investment" as a form of reparations.

There are signs that businesses, reading such indicators, are beginning to recognize how important property rights are to their bottom lines. Pharmaceutical companies, shaken by federal willingness to trim the rights of patent holders according to the winds of political fashion, showed up on a panel at the last annual conference of the Washington, D.C., legal foundation Defenders of Property Rights. Another participant was Microsoft.

Such interest does not necessarily signify a principled commitment to property rights. Witness the inconsistent stance of the cable industry. A federal judge in Florida recently decided that the Pole Attachment Act, which mainly benefits cable companies, takes the property of utility companies, triggering the Fifth Amendment's requirement of just compensation. Meanwhile, the cable industry has been trying to convince the FCC that "must carry" rules take property without compensation. You might think it would welcome the Florida decision as a useful precedent, especially since pole attachment is a minor issue for the cable industry, while "must carry" really matters, largely because of its huge potential impact in the context of the shift to high-definition television. The industry is also under assault by Internet service providers, which are trying to ensure that any new investments in cable as a means of linking to the Internet are made available to all, not just to ISPs related to the cable companies—another reason to welcome a court's vindication of the Takings Clause. Yet the cable companies are asking an appeals court to reverse the Florida decision.

Similarly, attorneys may object when a state tries to steal their time for pro bono work, but they are happy to help it steal other people's money. Many states require lawyers to deposit client funds entrusted to them in special accounts. The interest, by law, goes not to the clients but to finance state- and bar-approved pro bono enterprises. The rationale is that the amounts are so small that divvying them up is not worth the transaction costs, but this is patently false. A homeowner putting up half a million for a real estate deal loses $82 per day when interest rates are at 6 percent, a sum worth tracking in this era of cheap computing. Last year, in *Phillips v. Washington Legal Foundation*, the U.S. Supreme Court ruled that such interest is indeed property, sending the case back to a district court in Texas to determine whether the state's use of the money amounts to a taking.

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A psychological barrier keeps business executives, and their lawyers especially, from joining the property rights movement. Since the 1930s, legal education has imbued students with contempt for the Supreme Court justices of the early 20th century, who are depicted as mossbacks resisting the progress represented by New Deal.

Not many businesses grasp the connection between government appropriation of property in the name of environmental goals and government appropriation in the name of optimal market structure or for the benefit of campaign contributors or other favored groups. They have not realized that a Congress that does not think twice about the property rights implications of reallocating cable TV channels learned its bad habits from dealing with rural landowners.

Because the connection has not yet been made, property rights issues still have little political traction with the white-collar masses of suburbia or with the business PACs capable of forcing issues to the attention of politicians hungry for campaign cash. Business employees generally have applauded as the right to property was undermined in the name of environmentalism. When Microsoft employees object to the assault on the company's intellectual property, it is fair to ask where they stood when Spotted Owl protection was devastating timbering communities and landowners in the Northwest.

There is also a tendency among business executives to assume that the source of their troubles is some sort of mistake or misunderstanding. Last year, as the Microsoft litigation began to heat up, Bill Gates met with a group of Washington think tank representatives, mostly libertarian in orientation and steeped in the "public choice" view of government as driven by the interests of the people who run it and the groups that reward them. Afterward, Fred Smith, president of the Competitive Enterprise Institute, observed: "Gates still thinks government is basically efficient and effective, but that in this one case it is making a mistake. Once that is pointed out, government will change its policies. He does not realize that to politicians Microsoft is merely a vulnerable and wealthy target, ripe for the picking."

Another psychological barrier keeps business executives, and their lawyers especially, from joining the property rights movement. Since the 1930s, legal education has imbued students with contempt for the Supreme Court justices of the early 20th century, who are depicted as mossbacks resisting the progress represented by New Deal legislation. The political, social, and legal story of that era is much more nuanced then this, of course, but victors write history, and the New Dealers won. The result, after half a century, is that most business lawyers feel uncom-

fortable supporting the right to property. It is like being seen by your neighbor in the X-rated section of the video store.

This discomfort is reinforced by the lawyers' corporate clients, who have been told for 20 years that defending the right to property makes one "anti-environment." Nancy Marzulla runs Defenders of Property Rights and, like anyone in such a position, is always looking for potential supporters. She reports that corporate representatives keep calling, but it is awfully hard to convince them that this is the side they should be on because it's the right side and because it's in their interest.

But the prospect of losing his firm's core assets tends to focus the mind of a corporate executive. So consciousness is indeed being raised, as business realizes there is something new and ominous in the current tide of regulatory proposals. In the past, regulation mostly involved control at the margins. It could be a nuisance, it could raise costs, it could be pointless, but it was an irritant rather than a threat to the essence of the enterprise. Now business as a class is realizing that legislators and regulators are losing their inhibitions, that governments are become more boldly appropriative, not just adding costs but asserting dominion over key assets. As recently as a decade ago, a proposal such as the one put forward by the state attorneys general for Microsoft would have been dismissed as nonsense. Today, industry had better take it seriously. Gates' next meeting with the think tanks may have a different tone.

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While business executives were looking the other way, thinking it was not their problem, historic protections were being diluted. According to the Supreme Court, regulation does not constitute a "taking" unless it deprives the owner of virtually all use of the property, which means 90 percent of the value can disappear with no redress.

This spillover of property rights issues into the boardrooms of corporate America is creating an interesting political situation. To date, the property rights movement has not been doing very well. It is the ragged relation of conservatism, invited to dinner on major holidays but relegated to the children's table, where its advocates can be patted on the head occasionally while not interfering with the serious conversation.

The reasons for this situation can be understood by considering the economic interests at stake. Because the property rights issue is associated primarily with real estate, the core of the movement is landowners, mostly rural, allied with some natural resource companies, trying to defend against a complex array of regulatory innovations concerning wetlands, endangered species, land use, coastal zones, public lands, rails to trails, heritage rivers, and other causes.

Once upon a time in America, the combination of natural resource companies and rural landowners could make the political system quake. But the technological revolutions of the 20th century have shifted the nation's economic center of gravity, and what counts now is money, machinery, information technology, and brain power. Even agriculture and natural resource industries are as automated as manufacturing plants, no longer relying on the huge base of skilled workers that leads to political power.

In any event, the natural resource companies' interest in property rights is a bit academic. They get burned occasionally on site-specific issues, but they have learned to cut deals, giving up some of their property in exchange for the right to exploit the rest. The payoff demand spurned by John Taylor, the D.C. retiree trying to build a new house, would be a routine transaction to any large company. Besides, if a company cannot operate in the United States, well, it's a big world. As long as Americans need the fruits of the earth to support their consumption, a timber, mining, or oil company can find more welcoming climes and ship its products home.

Even real estate developers, who cannot move offshore, are not vitally concerned with property rights. They have learned not to inventory land. They buy options, get all the permits nailed down, and only then take title. The nation wants homes, workplaces, and malls, so the developers will be allowed to build somewhere, and the exact site matters little to them. In fact, the tighter the restrictions, the higher the rewards to those who can navigate the environmental and permitting maze, and the higher the roadblocks against less savvy or well-wired competitors.

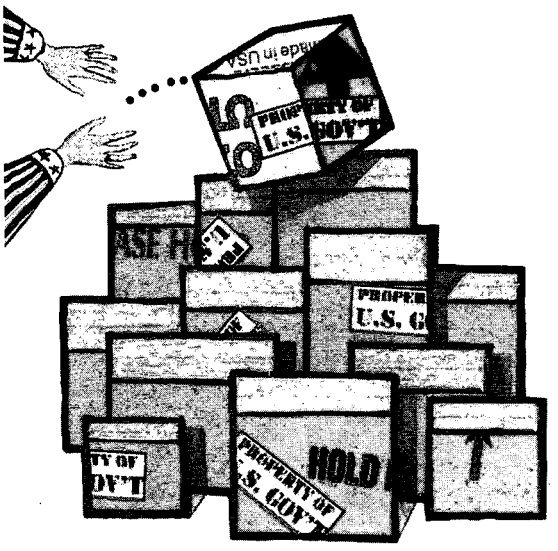
The outcry from the general public is muted as well. Most people use land to live or recreate on, not to make a living. The offending rules are not directed at the homeowners of suburbia, for whom property is a consumption item. Restrictions do affect some members of this class, and the files of the advocacy groups are full of dire tales from individual homeowners like John Taylor. Restrictions may also raise housing prices and impose other indirect costs, such as longer commutes and more unattractive sprawl, but these are pretty well hidden. Governments are not assaulting suburbanites as a class in an obvious way, and any nascent resistance has been mild.

The West, in particular, is split on property rights. It is the most urbanized part of the country, judged by the percentage of the populace in metropolitan areas. Urban Westerners are inclined to applaud restrictions on rural land use, by reason of both

environmentalist ideology and perceived self-interest. The less that grazers, loggers, miners, or farmers get to use land, they think, the more will be available for the urbanites. They are not always right in their judgment of self-interest. Obliterating the old logging roads in the national forests, for example, as the Clinton administration is trying to do, turns these into de facto wilderness—accessible only to hardy backpackers, as remote as the moon from the married-with-children set or the geriatric brigade—but that truth has not yet come home to the residents of Denver and Portland.

For the property rights movement, the upshot of these factors is political weakness. Legislation gets introduced in Congress, but it never goes anywhere. States have passed some property protection laws, but these are for the most part Band-Aids. Now that government has expanded its assault on property rights beyond land-based interests to include the bastions of contemporary economic power, the property rights movement may be on the verge of a revival.

When business executives actually examine the body of Fifth Amendment doctrine, they are going to be surprised. While they were looking the other way, thinking it was not their problem, historic protections were being diluted. According to the Supreme Court, regulation (as distinguished from a physical occupation) does not constitute a "taking" unless it deprives the owner of virtually all use of the property, which means 90 percent of the value can disappear with no redress. Nor is there any limitation on the use to which the government puts appropriated property. A "public use" is anything the executive branch says it is, and it can include taking property from one citizen and giving to another. Under existing law, the Taylors have no legal protection from the Fish & Wildlife Service, which can turn their lot into a wildlife refuge even though no wildlife actually live on it. Meanwhile, the Supreme Court has for the most part let stand a host of procedural obstacles designed to block the few claims that are valid under the precedents.



The legal situation is not uniformly bleak, however. Several of the cases won by landowners in recent years erect principles upon which judges can build. Under *Dolan v. City of Tigard* (1994), for example, a locality does not have boundless authority to condition a construction permit on a landowner's willingness to dedicate part of his property to public use. Any requirement must bear a reasonable relationship to problems created by the construction. And under *Lucas v. South Carolina Coastal Council* (1991), a state may not summarily define as a "nuisance" a particular use of land—such as erecting a house on a beachfront lot amid existing beach houses—and then prohibit it. The definition of *nuisance* has to be grounded in the state's established property law.

Furthermore, two recent Supreme Court decisions may be signs of growing judicial uneasiness over the rising tide of legislative and regulatory threats to property rights in the business context. Last year, in *Eastern Enterprises v. Apfel*, the Supreme Court found that Congress had violated the Takings Clause with a law that funds health benefits for former coal miners by imposing a retroactive tax on almost all firms that have ever been in the coal business.

And in the 1996 case *United States v. Winstar*, the Court upheld the contract rights of savings and loan investors who had been promised regulatory relief by the Federal Deposit Insurance Corporation. The gist of the matter was that the FDIC induced sound institutions to ride to the rescue of failing S&Ls by promising that some dubious "goodwill" could be claimed as an asset for purposes of meeting capital requirements. The deal was a bad one for the public, motivated mostly by the government's desire to cover up the magnitude of the S&L disaster by avoiding closure of busted S&Ls, but it was a deal, and the rescuers relied on it. Then Congress outlawed this accounting method, which put the rescuers in violation of capital requirements, and the FDIC closed them down, imposing severe losses on their shareholders. The Court ruled that government could not enter a contract as a party, then turn around, put on a regulatory hat, and repudiate it. It could not rely on its status as a sovereign to summarily snuff out a contract right it had created without paying for the harm caused by the repudiation.

In addition to the possibilities opened up by such rulings, protective legislation, long stalled in Congress, may be viable if political support for property rights spreads beyond the current limited circle. So if corporate officers and directors start carrying around copies of the Constitution and proclaiming, "They can't do that to me," it could turn out that in fact they can't. It would be nice if businesses started doing this as a matter of principle, but principle is not really necessary. It is more important that companies realize this is where their long-term interest lies. Business cannot thrive if its energies are diverted from the economic market into the political market, into continual jockeying for favoritism in a war of all against all. What is really needed for the security of property is intelligent selfishness. ◆

Contributing Editor James V. DeLong (jdelong@regpolicy.com) is an adjunct scholar at the Competitive Enterprise Institute and the author of Property Matters: How Property Rights Are Under Assault—And Why You Should Care *(The Free Press). His Web site is www.regpolicy.com.*

Required Reading

Why is the Bureau of National Affairs Washington's biggest media organization? Because for more than 70 years, it's covered the government's every move.

By Michael W. Lynch

Ask most Americans which news organization is the most ubiquitous and influential in Washington, and they'll probably name *The Washington Post* or perhaps split the ticket with CNN. They'd be surprised to know that the news organization with the most reporters covering the daily machinations of the federal government is not the mighty *Post*, the hometown's dominant daily. Nor is it *The New York Times*, America's paper of record, which claims to gather all the news that's fit to print.

Washington's most omnipresent media organization is something called the Bureau of National Affairs. Unless you buy one of its products—which means you're most likely a lobbyist, health care executive, bureaucrat, human resource officer, labor lawyer, government affairs manager for a major corporation, or environmental compliance officer—you've probably never heard of BNA. But each day, this unsung company sends about 220 reporters into the halls of Congress and executive agencies, compared with about 60 each for the *Post* and *Times*. These BNA journalists, part of a worldwide staff of 1,657, fill some 200 high-priced publications with thousands of pages of "just the facts" copy, all chronicling, in great detail, what federal, state, and international bureaucracies are up to.

ILLUSTRATIONS: TIM WEBB

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Dear Friend:

I would like to send you a free copy of my new book on gold *"The Great Gold Comeback"*. My name is James Cook and I'm the author of "The Start-Up Entrepreneur", a popular business book that's been selling in the book stores for over ten years.

Why should you read my important new book on gold? Several powerful reasons exist today that completely change the old way of thinking about gold.

1. The crisis in Asia clearly shows the ultimate outcome of credit expansion. The U.S economy lives and breathes on low interest rates, easy credit and loose money. Mortgage refinancing, consumer credit, margin debt, leveraging, and credit cards heat up the economy and encourage speculation and overconsumption.
2. Shocking structural changes in the foundations of the U.S. economy have enhanced the need for gold. Low savings, low investment, excessive leverage, disastrous liquidity trends, trade deficits, high speculation and astronomical public and private debt are a few of these revolutionary changes.
3. Mainstream financial advisors and economists scorn gold to the extent it has become the premier contrary opinion investment of all time. In the debt- and deficit-ridden countries such as the U.S. and Canada, many people commit their funds exclusively to stocks and neglect hedging with gold.

From Author, Harry Browne

Since I entered the investment business 30 years ago, I have always held and recommended a position in gold. Without it I would feel unprotected.

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I've known Jim for 20 years, and I agreed to become a spokesman for Investment Rarities because of the excellent record his company has compiled for service and reliability.

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With best wishes,

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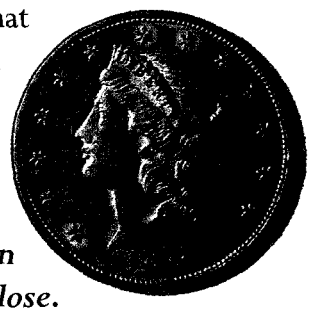
WHY SHOULD YOU BOTHER TO LEARN MORE ABOUT GOLD?

People cannot foresee the things they don't want to happen. In other words, your interest and need for some other outcome make it unlikely you will be ready for an economic shock. It's human nature. No matter how inevitable it may be, you won't see a crash coming. Because the full fury of a market and currency collapse will strike you so unexpectedly you stand to be devastated by it. Every paper asset you own, everything you count on and everything that has been promised you for your retirement can be swept away in a torrent of fear and panic. In the long economic history of the world, no nation's economy or paper money has escaped the pitiless repudiations, failures, depressions, shocks, devaluations, hyper-inflations and bankruptcies that have remorselessly wiped out the gullible citizenry.

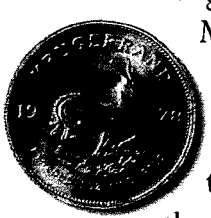
Here's another revelation. ***Only those who can benefit from a future event have any chance of forecasting it.*** For one reason, their minds are open to it and for another they're always thinking about it. It's my fervent belief that some of the ugliest chapters in the history of economics are going to repeat themselves in modern America. I've put the facts together for you in my book. If you believe that there is even a 10% chance of such an event, you need to read my book. By doing so the door will open on this possibility in your mind. What you do then is up to you, but at least you will have entertained the possibility and know the steps to protect yourself.



I know the thought of an economic crisis has crossed your mind. You may have a vague sense of unease. However, it is terribly difficult to comprehend this possibility when you need the future to be positive in order to accomplish your goals. ***An economic earthquake will hurt those people the worst who have the most to lose.*** You need to consider how to protect yourself. I want to show you that you have little to lose by preparing for the worst.

A MIGHTY DIFFERENCE OF OPINION EXISTS ABOUT GOLD.

In a recent article, The Economist Magazine quoted bankers and brokers who thought the importance of gold would decline principally because of derivatives. Many modern economists consider gold to be a useless relic. Wall Street is especially negative on gold.



At the other end of the spectrum we quote from a respected financial newsletter. "At a minimum, gold will rise to $3,000. A more likely scenario, however, is that the world's financial system will break down completely. (The basis of that system is the U.S. dollar.) In that case, gold will rise as high as $10,000 to $40,000 – a point at which all credit – paper will be backed by gold."

BEFORE YOU DECIDE WHETHER YOU WANT TO LEARN ABOUT GOLD, YOU NEED TO UNDERSTAND WHAT EXACTLY IT IS THAT GOLD DOES FOR YOU.

- If you purchased gold twenty years ago it will still buy the same amount of goods today that it did back then. Gold preserves purchasing power. You can't say that about stocks or bonds.
- Gold prices don't fluctuate much. Actually gold should be considered a conservative holding. With the exception of two years (1974 and 1980) gold has had little or no price volatility in hundreds of years.
- When the Asian currencies recently lost up to half their value overnight, Asians with gold lost nothing. Gold offsets the loss of currency values. Like Asia, the U.S. relentlessly expands money and credit.
- The absolute liquidity of gold means it can be turned into cash virtually anywhere in the world.
- Lawsuits and judgments can strip you of your assets. Stock, bonds and real estate are highly visible. Gold stays hidden.
- Gold doesn't need a strong financial statement. Annuities and bonds depend on the financial strength of the issuer. The value of gold requires no outside solvency.
- Gold is recognized and cherished everywhere in the world. No other asset carries such universal recognition and respect.
- Unlike real estate or art objects, a high concentration of gold values can be stored in a small place. Gold is easily hidden and highly portable.
- In a deflation or asset collapse gold tends to lose less value than other assets. In the depression gold was revalued from $18 to $36 an ounce.
- In cases of national emergencies, wars, disasters, civil unrest and financial crisis, gold saves lives, provides comforts and secures passage. Gold can preserve your lifestyle.

MY BOOK WILL GIVE YOU A STATE OF THE ART EDUCATION ON GOLD.

Each chapter gives you fresh insights:

Gold and Civilization
Gold and Western Europe
Gold In America
Gold To The Present
The Spending Problem
The Economist
The Welfare Problem
Anecdotal Evidence
Liberal Legacy

The Goose
That Laid the Golden Egg
Runaway Subsidies
Economic Decline
Decade of Crisis
A Trillion Here,
A Trillion There
Envy
The Freedom Philosopher

The Role of Gold
How to Avoid the Pitfalls and Traps in Gold Investments
Gold Bullion and Gold Coins
The Best
Gold Collector Coins
Keeping What You Have
Gold Confiscation

Gold - Where Does It Come From and Where Does It Go?
Gold Stocks - Follow the Canadians
Culture Wars
A Full Blown Economic Collapse
What You Should Do Now

Send the enclosed order form in to receive Your free copy of my book, *"The Great Gold Comeback"*, or call toll free **1-800-328-1860.**

Sincerely,

James R. Cook

James R. Cook is President of Investment Rarities Incorporated. He is the author of *The Start-up Entrepreneur*, a best-selling business book, and has appeared on Financial News Network, Cable News Network, the Regis Philbin Show, the Larry King Show, and the Today Show.

In return for our free book (we will also pick up the postage) we ask only one thing. You must read Chapter XXVI, "A Full Blown Economic Collapse". This powerful chapter gives the forceful arguments you need to hear about our economic future. Once you have read this informative chapter you will never think quite the same way again. It could be the most important information you ever read. All we ask in return for our free book is that you study this chapter carefully.

Here is the INTRODUCTION to James Cook's new book

"THE GREAT GOLD COMEBACK."

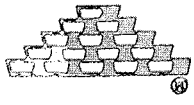
Gold holds less appeal to the U.S. public these days than at anytime in the past twenty-five years and perhaps less than ever before in U.S. history. At such a nadir of its influence the need for gold is greater than ever. That would make sense from a contrary opinion standpoint. In a nation where self-indulgence, bizarre behavior, over-consumption, gambling, stimulants, narcotics, mindless entertainment, marginal integrity and crime are commonplace, gold would be of small interest.

In an age of victims, welfarism, redistribution, government paternalism, political correctness, something for nothing, left-wing economics and a de-emphasis of merit, gold would attract few advocates.

In a country with record low savings and capital investment, excessive public and private debt, inflationary money growth, gargantuan trade deficits and grossly over-speculated securities markets, gold would have few followers.

The wealthiest nation in the world has become the most dysfunctional. A great leveling lies ahead. Don't confuse these views with the oddballs who carry billboards that proclaim "The end is near". There will always be an America and a dollar – even if a dollar only buys you a piece of bubble gum. What I am saying is that the end of America as we know it is near. Things will be different after a stock market crash, painfully high interest rates, a bond market disaster, plunging asset values, severe price inflation, a debt meltdown, government defaults, a collapsing dollar, a depression and widespread panic and crisis.

Frankly, we deserve this ferocious comeuppance. Everywhere you look in America there is dependency, financial excess, profligacy, intemperance, grossness, indolence, bad manners, arrogance and incivility. In the long run the nation will be better off after the effects of the great financial meltdown that lies ahead. Unfortunately, many will be hurt and the ability to survive financially will depend on foresight and mental toughness. This book is written for the nimble few who will be the financial survivors in the stressful future. They will benefit the most from the great gold comeback.



CALL TOLL FREE 1-800-328-1860

or clip and send to: Investment Rarities Incorporated
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Minneapolis, MN 55425

RM

❑ *Please send me a FREE copy of Jim Cook's book* **"The Great Gold Comeback."**

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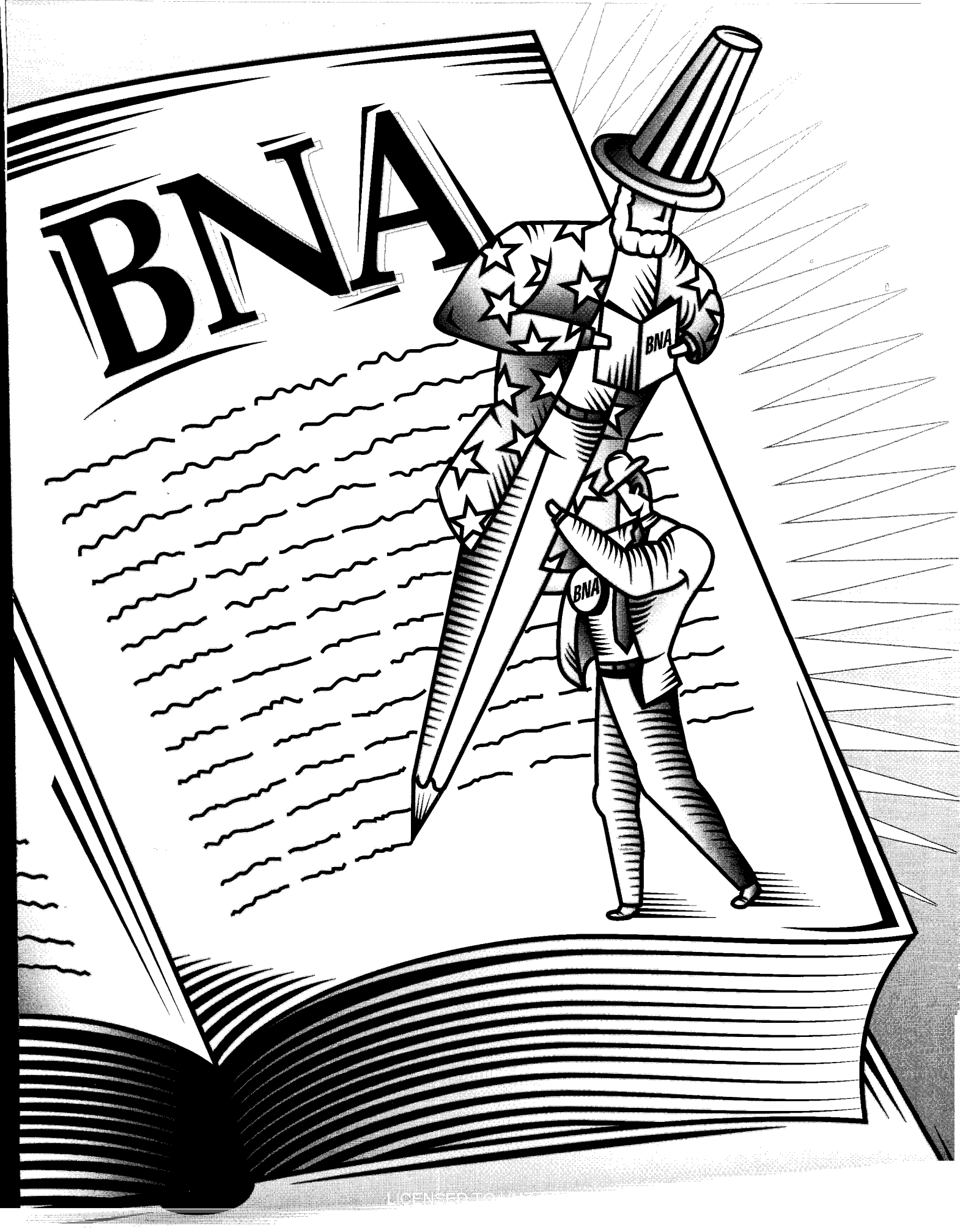
(Phone number required for processing)


BNA
BNA
BNA

"No sir, we are not a part of the federal government," is the standard BNA response to the inevitable question. The company is, rather, a facts funnel for government information on policies that affect business. Its writers know, as rookie reporter John Stewart was told 60 years ago, that "nobody is going to read what you write because he wants to. He's reading it because he has to. All he wants is facts." (The advice worked well for Stewart, who served as president and CEO from 1964–79 before moving up to chairman of the board until he retired in 1993.)

In the BNA's history and publications, we can see not only the patterns of federal expansion but a disturbing fact about ubiquitous regulation: Simply keeping up with what the law requires has become so burdensome that tracking government actions can employ hundreds of reporters updating thousands of regulatory specialists.

With a few exceptions—education policy, welfare issues that don't relate to labor or taxes, and foreign policy that isn't trade-related—if policy is being made, BNA is telling its subscribers about it. "They are a journal of record for the regulatory apparatus," says C. Boyden Gray, who served as counsel to regulatory task forces in the Reagan and Bush administrations. (Gray is a trustee of the Reason Foundation, REASON's parent organization.) He reads BNA's *Daily Environment Report* every day ($2,998 a year for print, around $2,000 for Web or e-mail delivery). "The business pages used to cover this more 20 years ago," says Gray. "Then it got to be too much, so they basically don't cover it at all any more."

As Gray suggests, the regulatory state's growth has been good for BNA. In the company's history and publications, we can see not only the patterns of that expansion but a disturbing fact about ubiquitous regulation: Simply keeping up with what the law requires has become so burdensome that tracking government actions can employ hundreds of reporters updating thousands of regulatory specialists. BNA's success, while an impressive business story, suggests the costs of regulation, most of which are never measured. The company's sales, only the tip of this iceberg, were $269 million last year.

The BNA story also suggests a rarely acknowledged interest group calculus: All those reporters and readers have become, sometimes despite their best intentions, implicit supporters of the regulatory state. "Well," chuckles Michael Maibach, Intel's Washington-based vice president for government affairs, "I think everyone thinks government could do a little bit less, but it's part of our job to keep track of what the government is doing, and you know, we're as happy as we can be. We happen to like these jobs." All that brainpower—of BNA's writers and editors, and of its subscribers—is also a regulatory cost, diverted from more productive pursuits.

Growing Gains

BNA began in 1929 with *The United States Daily*, which founder David Lawrence envisioned as a national paper of record, publishing the texts of laws, regulations, and court decisions. The idea failed. Subscriptions peaked at only 100,000, too few to support a conventional publication. A few years later on a train trip to New York, however, *New York Times* publisher Adolph Ochs offered Lawrence some valuable advice: There just aren't enough people who need daily information with that level of detail to support an advertising base, Ochs told Lawrence, who by then knew his publication was doomed. But, continued Ochs, the people who do need that information need it badly, and will be willing to pay enough to support advertisement-free publications.

That became the BNA model: expensive, ad-free publications focusing long and deep on public policy issues that affect business. (Lawrence converted *The United States Daily* into a weekly that later became *U.S. News and World Report.*) The newly reconstituted BNA's first two publications were a quarterly, *U.S. Patents, Trademark & Copyright Reports*, which published the text of patents and court decisions, and *U.S. Law Week*, which focused on federal and state court decisions. The company's raw material has remained largely government-supplied ever since.

"We grew with the government," says Mike Cavanagh, executive editor of BNA's Business Information Division. "We have expanded whenever a new body of regulation has been developed."

Not surprisingly, the New Deal was good for BNA's business. In 1937, the company got a major boost when President Roosevelt called for a national investigation of the practices of American business. "Among us today a concentration of private power without equal in history is growing," Roosevelt declared. "This concentration is seriously impairing the economic effectiveness of private enterprise."

To investigate, Congress established the Temporary National Economic Committee, composed of six members of Congress and six representatives of the executive branch. Lawrence knew that Roosevelt was putting American business on trial—which meant that business executives would need immediate, detailed information on the committee hearings. He offered the committee a deal: BNA would provide printed and bound daily transcripts to the committee for free. It would sell the same transcripts to other interested parties, delivered overnight, for $25 a week. BNA soon had 2,000 subscrib-

ers. The six-month investigation is documented in 13 volumes that sit today in the company's archives.

Such cooperation has served both the federal government and BNA well. In 1941, BNA became the government's visible hand, publishing its *Daily Report on Price and Production Controls, Manpower Report,* and *War Labor Report.* BNA was the only private publisher to receive an unlimited allocation of paper during the war, and it became the largest private user of air service.

After World War II, Lawrence sold the company to its most senior editors, who cut all of BNA's employees in on the deal, creating a wholly employee-owned corporation in 1947. Back then, BNA had 279 full-time employees, the *Federal Register* had 8,902 pages, and the *Code of Federal Regulations* had 22,285 pages. Since then, each has increased more than five-fold.

One Word: Ergonomics

Today, BNA publishes eight daily newsletters on such subjects as taxes, environmental regulations, and labor law. It also puts out a pile of weekly and bi-weekly reports, books, and CD-ROMs. On health care alone, BNA publishes eight titles, including *Managed Care Reporter, Health Care Policy Report,* and *Medicare Report.* BNA's scope is not limited to Washington. It has correspondents in 40 countries and all 50 states who report on regulation outside the Beltway. And its human resource publications include "best practices" reporting which may have little to do with government.

Still, the company's focus remains centered on Washington. "We try to provide a complete view of what is going on in Washington," says Toby McIntosh, who edits BNA's *Daily Report for Executives,* a summary publication that pulls material from BNA's vast arsenal of reports. *DER* costs $6,200 year and runs around 105 pages daily.

The day I interviewed McIntosh, *The Washington Post* featured a front-page story on OSHA's proposed ergonomics standards. "I was smiling when I read the paper this morning," says McIntosh, "because we ran a draft of that [rule] two weeks ago." This hardly matters to the average *Post* reader, who pays 25 cents a day and for whom the minutia of ergonomics is sleep-inducing. But for an association head or business lobbyist, two weeks' notice is worth the extra money. When the mainstream reporters call for comment, BNA's exclusive means that its readers have the facts nailed down and a well-crafted response. And BNA, of course, was covering ergonomics long before these draft rules. In 1998 the *DER* reported on ergonomics 80 times, while Monica got a mere 16 mentions.

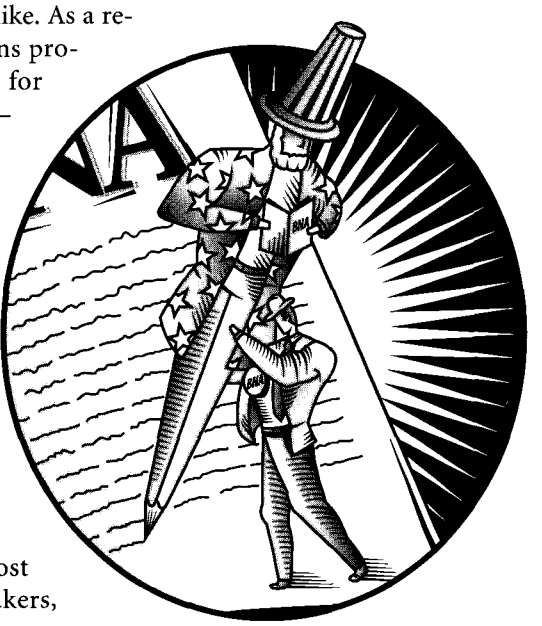
Read BNA coverage of an issue side by side with the *Post* or the *Times,* and it becomes clear that the outlets differ on level of detail and context.

While other publications return to an issue only when major movements occur, BNA covers even the tiniest baby steps. This has two implications: BNA has less need to put events in context, since it can assume readers understand the issue. And it shies away from drawing conclusions and making predictions, letting readers fill in the implications of the news themselves.

This latter distinction was displayed in late January when the U.S. Supreme Court handed down a complex ruling in a fight among the Federal Communications Commission, long distance carriers, and local phone companies, based on the 1996 Telecommunications Act. *The New York Times* led its story claiming the FCC lost, which "could delay efforts to open the $100 billion local telephone business to competition." *The Washington Post*'s lead concluded the exact opposite, declaring that the decision "could hasten the pace of competition in one of the last bastions of monopoly in telecommunications, the $100-billion-a-year business of local phone service." BNA, perhaps anticipating its conflicted competition, reported, "The high court's ruling is cheered by both sides." Says a proud McIntosh: "We have less of a tendency to try to push a one-perspective lead. We are more willing to deal with the ambiguity of a story."

That's what BNA customers are buying. Says the manager of public policy for a major bank, who purchases a suite of BNA publications on the Web: "I think what the BNA depicts quite clearly is the complexity of the relationship between business and government and the extent of government involvement in markets. Corporate managers as a result need a resource like BNA to keep track of the multitude of touch points between business and government that change daily." He notes that "BNA [publications have] has broader and more detailed coverage than *The Washington Post.* They are accurate and unbiased."

BNA publications reproduce their sources' arguments without analysis or disputation, something Washington insiders like. As a result, these publications provide a neutral forum for the various players—executive branch bureaucrats, congressional staffers, industry representatives, think tank experts, etc.—to signal one another. "I am always excited to get quoted or cited in BNA's *International Trade Reporter* because I know our target audience, the most important policy makers,



read it," says Brink Lindsey, the Cato Institute's director of trade policy studies.

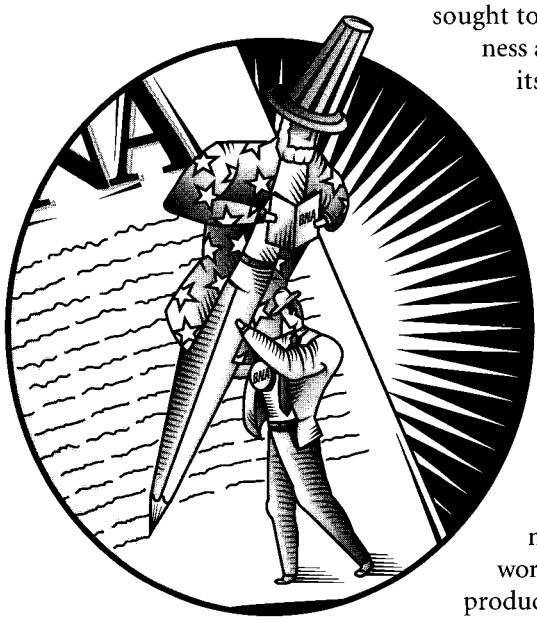
"It's a way for people in Washington to communicate with each other," says Paul F. Albergo, managing editor of BNA's *Health Care Policy* and *Health Care Daily*. His audience, he says, echoing Lindsey's description, "are the most important people in Washington."

Uncle Sam's Biographer

Government regulation, like any system, is constantly evolving. It reacts to supply, demand, external shocks, and the institutional interplay of the separate branches and different levels of government. BNA publications evolve in rapid response. Albergo's *Health Care Policy Report*, for instance, was launched three months after Clinton took office, when health care emerged as a national issue. *Labor Relations Reporter* first appeared on Labor Day 1937, a few months after the U.S. Supreme Court upheld the Wagner Act. *Environment Reporter* was launched less than two weeks after the first Earth Day. *Occupational Safety and Health Reporter* debuted one week after the 1970 Occupational Safety and Health Act became effective.

A look at BNA's past publications gives one an idea of just what the government's been up to. The federal government's expansion is generally broken down into two periods. The first included economic regulations, which concentrated on regulating particular industries and labor relations to counteract a perceived abundance of "private power." Although some existed earlier, these economic regulations flourished in the New Deal, with such laws as the National Labor Relations Act, the Fair Labor Standards Act, and the Agricultural Adjustment Act.

The Great Society's social regulation marked the second push. Staring in the 1960s, the government sought to ensure general fairness and safety for each of its citizens, not just a balance of power between the working man and industry. Government would go to bat for minorities and women, under the 1964 Civil Rights Act. New regulatory agencies would also provide us all with a clean environment and ensure safe workplaces and consumer products.



As we approach the next century, journalist Jonathan Rauch argues we have entered yet another phase of regulation—that of "microgovernment." Empowered by statutes and expansive court rulings, microgovernment regulates through torts and personal rights litigation, in which individuals sue on their own behalf instead of being represented by unions or government agencies. Microgovernment expands without weighing social costs and benefits, because it is driven not by agency or group actions but by individuals with no particular interest in the broader ramifications of their actions.

The BNA library, which sits on the second floor of the company's seven-story building, documents these periods. BNA cut its teeth on the New Deal's second-wave labor legislation, which is reflected in the shelves of literature on labor law and relations. There's a 10-part series called *Labor Relations and Social Problems*, apparently designed for college courses, which covers details of labor law, a dense patchwork of legislation that first granted unions great powers of coercion and then later tried to rein them in.

Staring straight ahead, one sees *The Taft-Hartley Act—After One Year*, a followup to its widely successful neighbor, *The New Labor Law: What the Labor-Management Relations Act, 1947, Means to Businessmen, Workers, Unions, and Their Advisors.* BNA had this publication available the day Congress voted to override Truman's veto. BNA editors presented Sen. Robert Taft with a copy upon passage, and the book went on to sell 20,000 copies, an extraordinary success for that type of publication in that era.

Down the aisle, BNA's shelves reflect the social legislation of the 1960s and '70s. One is confronted by the blue spine of *The Civil Rights Act of 1964: Text, Analysis, Legislative History: Operations Manual on Fair Employment Practices, Public Accommodations, Federal Assistance.* This book sold more than 2,000 copies in the first three weeks. Bound in red is *The Job Safety and Health Act of 1970: Text, Analysis, Legislative History: Operations Manual.* And you can't miss the 1,400-plus pages of BNA's 1976 *Employment Discrimination Law.*

The environmental regulation of the 1970s was particularly good to BNA, which created a new division to cover the subject. *U.S. Environmental Laws* is an orange and black brick of a book. The adjacent shelf supports a blue-bound series with such titles as *Environmental Criminal Liabilities, Environmental Law Handbook, Environmental Tax Handbook: Strategies for Compliance,* and *Endangered and Other Protected Species: Federal Laws and Regulations.*

From here, we move into microgovernment, focusing on the 1992 book, *Sexual Harassment in Employment Law.* Writing in the wake of the Hill-Thomas hearings, the authors explain, "The idea that harassment could be punished through the legal system is of relatively recent origin." They note that "every woman—*every*

woman—who has spent substantial time in the work force in the last two decades can tell at least one story about being the object of sexual harassment." This, of course, means that every employer—*every employer*—who has ever hired a woman is potentially liable and needs to keep apace of the ever-changing law. Continuing in the field of employment law, the shelves offer advice on *Alcohol and Drugs: Issues in the Workplace* and the *BNA Plus Info Pack [on the] Family and Medical Leave Act.*

A Core Sample

If Congress has passed an environmental, employment, or tax law, or an executive branch bureaucracy has issued a regulation in one of these areas, chances are some expert has analyzed it for BNA. Ditto for court decisions. A real-time way to get a handle on the myriad tasks you're paying your government to perform is to slice a cross-section of BNA publications for any two-week period.

Subscribers to BNA's *Worker's Compensation Report* learned on December 7, for instance, that after 10 years of careful study, the Occupational Safety and Health Administration had issued a rule requiring employers with forklifts to develop, or hire consultants to develop, formal training programs for forklift operators, with "refresher training" every three years. Forklifts, despite being easy to operate, cause 94,000 injuries each year, according to OSHA, and 100 deaths. For a mere $16.9 million of privately incurred costs, OSHA expects this particular regulation to prevent 9,500 injuries and 11 deaths, for a total savings to industry of $135 million. In keeping with BNA's scrupulous "just the facts" approach, the report provides no clue to how this figure was calculated or whether it is believable.

Or consider this amusing tidbit on the front of the December 17 *Health Care Fraud Report*: "Under the proposal, to be included in the president's fiscal 1999 budget, Medicare payments for prescription drugs would be reduced to the actual amount that the drugs cost." Imagine—paying only what something "costs." According to the article, the Department of Health and Human Services estimates that in 1996 alone the government spent $446 million more than the wholesale price offered to private vendors for 22 drugs.

There are ample signs of microgovernment in the week's reports. Those who paid $816 last year for BNA's *Human Resources Report* were among the first to know that, as reported in the December 7 issue, "Using Subjective Factors [in promotion] Could Be Pretext for Bias." If you thought such soft skills as personality, attitude, and verbal communication were as important as fancy degrees for certain jobs, you're guilty of anachronistic thinking. The summary on the front page says it all: "Hispanic applicant can proceed with her argument that Utah state Tax Commission's interviews process, which assessed candidates for promotion on such criteria as 'assertiveness' and 'attitude,' contained subjective standards that could be pretexts for discrimination, court rules."

Bouncing over a column, subscribers no doubt got a chuckle out of this nugget, which ran under the boldfaced heading "Sexual Harassment": "Restaurant should have taken steps to prevent male working with history of harassing female co-workers from luring hostess into closet and attacking her, Minnesota appeals court rules."

To the untrained eye, this is all quite funny. But to business people, constant updates on the state of America's litigation explosion are serious stuff. Laws and regulations are equally important—and time-sensitive. As Ochs predicted, when people's livelihoods depend on current information, they are willing to pay handsomely to receive it. That is why the "most important" people in Washington read publications most people will never know exist. Government's growth has made it too expensive and too complicated for ordinary journalists and ordinary citizens to keep track of what it does. The news that once filled the business pages has, as Gray suggested, become the stuff of specialists.

Through laws, regulations, and court decisions, our democracy has, as Alexis de Tocqueville predicted in the early 19th century, covered "the whole of social life with a network of petty, complicated rules." Their impact includes the growth of BNA itself, and of the specialists it serves. Expanding government has been good to BNA.

For 70 years, BNA has stuck to its mission: "to report, interpret and explain the increasingly complicated workings of the federal government and their far-reaching impact on the economic life of the nation." And for 70 years, those complications have indeed increased. Through laws, regulations, and court decisions, our democracy has, as Alexis de Tocqueville predicted in the early 19th century, covered "the whole of social life with a network of petty, complicated rules." Their impact includes the growth of BNA itself and of the specialists it serves.

Expanding government has been good to BNA, acknowledges Mike Cavanagh of the Business Information Division. "It works for us," he says, "because our job is to say what they're doing. And if they shut up tomorrow, we'd have many fewer subscribers." ◆

Michael W. Lynch (mlynch@reasondc.org) is REASON*'s Washington editor.*

The Atrocity Exhibition

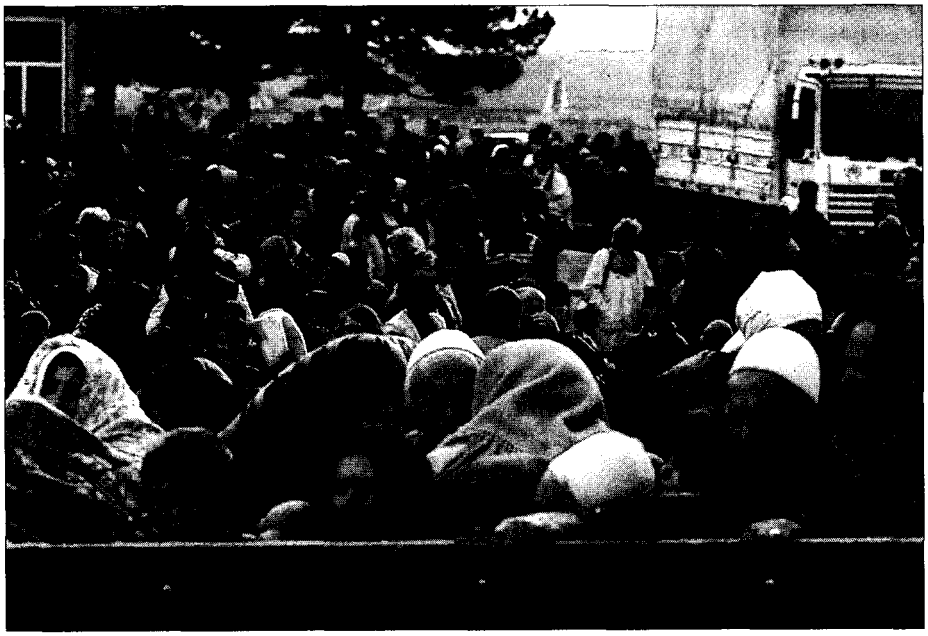
A war fueled by imagery

By Charles Paul Freund

In 1993, a photographer named Kevin Carter went to Sudan to capture images of that nation's dismal and unending civil war. One of the pictures he took was of a starving little girl: She had collapsed in the bush, and a vulture nearby seemed to be waiting for her to die. The photo was reproduced all over the world, touching many thousands of people, becoming an icon of African misery, winning a Pulitzer Prize, and, a year later, apparently contributing to Carter's own suicide.

Carter, a white South African, spent only a couple of days in Sudan. According to Susan D. Moeller, who tells Carter's story in *Compassion Fatigue: How the Media Sell Disease, Famine, War and Death*, he had gone into the bush seeking relief from the terrible starvation and suffering he was documenting, when he encountered the emaciated girl. When he saw the vulture land, Carter waited quietly, hoping the bird would spread its wings and give him an even more dramatic image. It didn't, and he eventually chased the bird away. The girl gathered her strength and resumed her journey toward a feeding center. Afterward, writes Moeller, Carter "sat by a tree, talked to God, cried, and thought about his own daughter, Megan."

When the image of the prostrate girl and the patient vulture appeared, many people demanded to know what had happened to her. *The New York Times* explained in an editors' note that while she resumed her trek, the photographer didn't know if she had survived. Carter stood accused; callers in the middle of the night denounced him. The girl began to haunt the photographer. In June 1994, Carter, beset by difficulties, killed himself. His suicide note speaks of the ghosts he could not escape, the "vivid memories of killings & corpses & anger & pain," and the "starving and wounded children" ever before his eyes.



AP/WIDE WORLD PHOTO

Picture Imperfect: Ethnic Albanian refugees arrive in the town of Kukes. Whatever their emotional content, such images remain essentially political.

This death of a messenger is a cautionary tale for an age of atrocity imagery. Terrible pictures of agony and murder have come to America from Lebanon, from Somalia, from Haiti, from Rwanda, and now from Kosovo, and they have unleashed the most powerful of emotions. Yet these emotions emerge from pictures that tell inevitably distorted versions of their awful realities. Their concrete representations suggest a moral imperative to act, to intervene with force against evil. Yet the resulting interventions have, one after the other, revealed the illusions of mercy: There is no such thing as military humanitarianism. Such action, despite its moral incentive, is always political, and always results in political consequences and responsibilities. When these assert themselves, the atrocity imagery changes: It often features Americans.

In Carter's case, Western newspaper readers saw a little girl. Carter, in the Sudanese village where he landed, was watching 20 people starve to death each hour. Perhaps he might have laid aside his camera to give the victims what succor he could (and thus never have encountered the girl in the bush); perhaps his photographs could have led to greater help than he could personally give. Should he have carried one girl to safety? Carter was surrounded by hundreds of starving children. When he sat by the tree and wept, it was beneath a burden of futility. But his was not a photo of futility, nor of mass starvation, nor of religious factionalism, nor of civil war. Readers saw a little girl. In part, at least, Carter died for that.

While Kevin Carter was in Sudan, American forces were not very far away: They were in Somalia. They'd been dispatched there by George Bush, who specifically cited the "shocking images" of starvation and violence from that collapsed nation when he announced a humanitarian intervention. The use of America's military power for such purposes had broad public support; indeed, Bush was actually under pressure to act as a result of the deeply disturbing imagery. The Cold

War was over; history had ended with the collapse of ideological challenge to liberal democratic capitalism. America's enormous military power could become an arsenal for decency.

But it turns out that war is fought on history's nether side. The post-historical urge to rescue, as it emerges from dangerously sentimentalized atrocity imagery, is considerably weaker in practice than is the historical urge to power that it confronts on the ground.

American forces, under Bill Clinton, altered their Somali mission from one of alleviating hunger to one of "nation building," thus involving the U.S. military in a local political struggle that policy makers didn't take seriously. The result was that the United States, in all its might, was driven from Somalia by a local militia leader whose followers dragged the despoiled corpses of some American soldiers through the streets. Somalia remains the "failed state" it was before American troops arrived, its people living in the continuing misery that results from total national dysfunction. But what little imagery emerges from Somalia has seemingly lost its moral dimension; for Americans, at least, such imagery now has political content, and is judged politically when it is displayed at all.

This intervention was itself a replay of the American misadventure in Beirut in 1982, when, in the wake of the massacres at the Sabra and Shattila refugee camps, Ronald Reagan sent in the Marines while citing the terrible pictures of suffering. Though seemingly engaged in a humanitarian effort aimed at policing and stabilizing the volatile situation, Americans actually found themselves enmeshed in a complex political struggle for the control of Lebanon. The Marines were of course pulled out the next year after their barracks were bombed, killing 223 soldiers. The perpetrators of the bombing have never been identified; Lebanon today is controlled by Syria.

The NATO intervention under American leadership in Yugoslavia, over the issue of Kosovo, is the apotheosis of this pathos-driven moral imperative reduced immediately to political dross. In a notoriously rambling March 23 speech intended to frame the issues involved in the Kosovo conflict and to garner support for American military involvement there, the president cited a variety of reasons to take military action, and evoked the horrible pictures of Balkan bloodshed that had appeared in the press for years. He told the country that he wanted to create a world "where we don't have to worry about seeing scenes every night for the next 40 years of ethnic cleansing in some part of the world." With likely images of dead Americans no doubt in mind, the president made it clear in advance of the bombing campaign that there were no plans to send in ground troops.

This attempt to sell a military action on humanitarian grounds, yet split the difference between the two kinds of atrocity images, has had serious consequences: a military, political, and humanitarian miscalculation of historic proportions. NATO's air attacks provided cover for Serbian leader Slobodon Milosevic to begin an expulsion of ethnic Albanians from the Serbian province. Hundreds of thousands of persons have been driven into the fragile countries bordering Kosovo, straining their limited resources, threatening their political stability, and submerging the entire conflict in staggering suffering.

Indeed, although the bombing campaign was originally intended to force Milosevic to sign a NATO-brokered treaty involving Kosovo, the scale of the humanitarian emergency—including reports of murders of Kosovar men—recast him as an unofficial war criminal. That threw into doubt the air campaign's moral underpinnings. After all, what kind of moral victory would it be if a such a perpetrator was forced to sign a treaty, but otherwise retained political power?

Politically, the air campaign seemed to unite Serbians behind Milosevic, although most of them had disliked him and had wanted to get rid of him. Many Serbians felt unfairly targeted: Hundreds of thousands of them had recently been driven from Croatia, suffering great hardship with little or no attention from the United States or NATO. Indeed, many Serbians argued that during the Tito dictatorship after World War II they had been driven by the thousands from Kosovo, which they consider their sacred homeland, by the ethnic Albanians who then had power over the province.

As a result of the bombing campaign, NATO seems to have traded its relationship with Russia (where nationalists were threatening to radicalize a fragile political situation) for a marriage of sorts with the Kosovo Liberation Army, a group that the United States had until recently called "terrorists" and provocateurs. The KLA's backing is as murky as its agenda, which reportedly calls for the creation of a "Greater Albania" along the lines of the rump state created by fascist Italian occupiers during World War II. That would appear to require the dismantling not only of Yugoslavia but of Macedonia as well. Yet some members of Congress have called for the arming and support of the organization.

The NATO intervention in Yugoslavia is the apotheosis of pathos-driven moral imperative reduced immediately to political dross.

While the bombing campaign became focused increasingly on the refugee problem it had itself seemingly exacerbated, the Clinton administration fell into visible disarray. The White House appeared completely flummoxed, claiming to have foreseen the expulsions, though obviously failing to prepare for them. Meanwhile, persons in the CIA, the Pentagon, and the State Department leaked stories to the press intended to pass the blame for the stunning mess. It was a singularly dismaying performance.

Yet American public support for continued military action—and even for the introduction of ground forces—actually grew. The power of atrocity imagery continued to assert itself.

In fact, attempting to respond to such images is entirely appropriate; if the United States can alleviate suffering with aid, sanctions, or even military action, then

it should debate doing so, determine if it is willing to accept the foreseeable consequences, and act. But misunderstanding and sentimentalizing these images is an invitation to disaster. For all their inherent emotional content, they remain ultimately political in nature. They arise from political circumstances, and one cannot "stop" them without accepting the inevitable political consequences of intervention. The United States cannot pretend that it is the Red Cross with a Pentagon, though a succession of presidents have acted as if it were.

In Haiti, American forces have become virtual prisoners of pathos. They were sent there by Clinton in response to pitiable images of Haitian bloodshed and chaos, and in support of a reform president, and they are now reportedly unable to leave their barracks. Haiti has made no discernible progress toward real democratic practice, and its government—made possible by this American act of militarized humanitarianism—stands accused of murdering its enemies. It is unclear what moral purpose is served by the continued presence in the country of U.S. troops. They remain under close confinement, however, to ensure that they do not become yet more targets of Haiti's endemic political violence, and the subject of more atrocity photographs featuring Americans soldiers.

In Rwanda, President Clinton took no action at all to forestall the true genocide that occurred five years ago, although the United States, France, and Belgium were all forewarned that many thousands of persons would soon be hacked to death by their traditional tribal enemies. However, the pictures of piles of bloody corpses that soon emerged from Rwanda were horrifying, and a massive effort was made to care for the many refugees who soon filled camps outside the country. There were many pitiable images to emerge from these camps as well; these pictures seemed to portray the remnants of a targeted people who had somehow escaped slaughter, and who were now reduced to the misery of refugee camp life. Having failed to stop the murders, the West surely had a moral obligation to give succor to the survivors.

But the details that eventually were reported from the camps were very different. Many of the people in the camps were not survivors of the slaughter; they were either perpetrators of the slaughter or members of the tribe that supported it. They had crowded into the camps to escape retribution. What appeared to be a morally necessary act of sanctuary was revealed to be—in large part, at least—aid and comfort to murderers.

And what of Kashmir? Tibet? The Kurds? Indeed, what of Iraq, where the deaths of many thousands of children have been attributed by the United Nations to the sanctions policy imposed by the United States? "Because we cannot do everything everywhere," says Secretary of State Madeleine Albright, "does not mean we should do nothing nowhere." True as far as it goes. But it also means that when we do choose to act, it should be in full appreciation not only of mercy's limits but of its consequences. ◆

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

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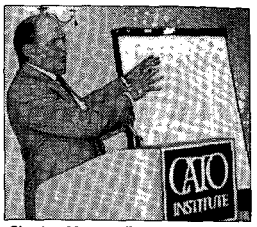

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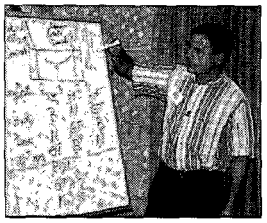
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That '70s Candidate

Jimmy Carter with helmet hair

By John J. Pitney Jr.

The decade of the 1970s is like a low-grade virus: Whenever we think we're over it, the symptoms return. This past season, the Fox network launched *That '70s Show*, a sitcom whose plots revolve around such things as Todd Rundgren concerts. At every wedding reception I've attended lately, they've played "YMCA," triggering that obligatory dance where you're supposed to mime the letters. (I always do it wrong, and end up looking like Koko the sign-language gorilla.) Even flare pants are back.

And Jimmy Carter is running for president again—only this time, his name is Elizabeth Dole.

It stands to reason. In Watergate's wake, people wanted the most un-Nixonian leader possible, and they found him in a Georgia peanut farmer who spoke of love, bragged of his status as a Washington outsider, and could say with a straight face, "I'll never lie to you." A similar phenomenon is at work today. Although Clinton's job approval numbers soared throughout Monicagate, Americans correctly judged his character to be the moral equivalent of a toxic waste dump. So in place of the wizard of id, they might be seeking someone who is utterly self-controlled—a leader who would again make the White House safe for interns.

If Elizabeth Dole becomes president, we'll probably get what we got in the 1970s: a pro-government agenda clad in polyester fuzzwords.

Who better than Elizabeth Dole? Not only is she a woman, but it is hard to picture an immoral thought taking root beneath her hair helmet. Like Carter, she sports a smarmy manner and humorless grin that spell "the opposite of sex."

At this point, you may be wondering whether the Carter comparison is overdrawn. Like Carter in 1976, Dole can claim moral superiority to the winner of the last election. But in 1999, so can every other candidate. In fact, so can nearly everyone else on this planet, with the possible exception of Charles Manson. And come to think of it, Manson hasn't bombed any aspirin factories lately.

In Dole's case, however, the similarity to Carter goes beyond the ability to surpass a pitifully low moral threshold. It is with words that presidents govern, and her words bear a creepy likeness to Carter's.

Start with slogans. After Dole filed with the Federal Election Commission, her homepage (www.edole2000.org) featured these words: "The United States of America deserves a government worthy of its people." That's mighty close to Carter's promise of "a government as good as its people." In her announcement speech, she said, "We're beginning to lose faith in our own institutions. It's only a short step to losing faith in ourselves, and then we would be lost." She added that we "must renew faith in the goodness of our nation."

In 1976, Carter told the California Senate, "If I had to sum up in one word what this campaign is all about, the word would be *faith*. The American people want to have faith in their government. And it is our responsibility, as public men and women, to do everything in our power to help them regain the faith that they have lost."

At first glance, these phrases sound nice enough, fitting with the give-'em-heaven religiosity we associate with both Carter and Dole. But that's also a problem. The notion that we're all basically good clashes with the concept of original sin, as the Gospel of Matthew puts it, "No one is good but One, that is, God."

Theology aside, an emphasis on individual goodness implies that the main challenge of politics is not to limit government but to find angelic leaders who will use that power for good ends. "If angels were to govern men," wrote Madison, "neither external nor internal controls on government would be necessary." Since the political world is short on angels, he reasoned, we need strict checks on what government can do.

Madisonian ideas took a beating in the 1970s, just as Carter and Dole were coming into prominence. In the Georgia governorship, Carter enlarged government as much as the state's political culture would allow; and when he became president, he signed the bills establishing the Departments of Energy and Education. In the White House Office of Consumer Affairs and at the Federal Trade Commission, Dole favored increased government regulation and even wanted a Consumer Protection Agency.

Both went so far as to vouch for the virtues of bureaucrats. During the 1976 primary campaign, Carter's rival Jerry Brown criticized government administrators. Carter replied, "That is wrong. I have seen at first hand that most government employees want to do a good job." In her 1988 joint autobiography with Bob Dole, Elizabeth fondly recalled her FTC years: "I believe now what I believed then. Perhaps no one is more unjustly maligned than the bureaucrat."

REASON reader, I hope you weren't sipping coffee while reading that line. If you were, you probably spit it all over the magazine. Take a minute to clean up.

OK now? Back to Dole. Lest you think I got her words wrong, check pages 152–153 of the hardcover edition of *The Doles: Unlimited Partners*. You'll find that it gets worse: "I tell youthful audiences they can find no higher calling in life than that of the public service." What about the priesthood, the ministry, or the rabbinate? Heck,

what about running a business and creating jobs?

"They may not get rich but they'll enrich the lives of countless others." Yeah, like trial lawyers and agribusiness lobbyists. "Because of them, the world is a little better." As Clinton would say, that depends on what the meaning of the word *better* is. If it includes frustration and impoverishment, she may be right.

If not bureaucrats, who causes policy problems? Carter pointed to special interests, saying that otherwise good people get selfish when they undertake political action. "Schoolteachers love their students," he said, "but when they organize and hire a lobbyist to work with the legislature, those lobbyists don't care anything about the students." Of course, that fine sentiment didn't stop him from promising to set up the Department of Education in return for teacher union support.

AP / WIDE WORLD PHOTO

Dole Drums: Despite holding two cabinet posts, Elizabeth Dole insists, "I'm not a politician."

Dole is just as consistently inconsistent. In her campaign announcement, she said government is: "paralyzed by special interests." Huh? In the Reagan White House, she headed the Office of Public Liaison, whose sole purpose was to cater to special interests. And then she headed two of the most clientele-serving Cabinet departments: Transportation and Labor. After all those experiences, plus four national campaigns at Bob Dole's side, she had the chutzpah to add, "I'm not a politician, and frankly today I think that may be a plus."

Carter portrayed his devotion to government as pragmatism, not ideology. "In the last analysis," he said in Los Angeles on August 23, 1976, "good government is not a matter of being liberal or conservative.... We want both progress and preservation." Dole plies the same murky waters. In a New Hampshire speech, she said: "Most Americans prefer solutions to sound bites"—which was her sound bite for the evening news. "This makes us naturally suspicious of what I call either/or politics: Liberal vs. conservative. Public school vs. private school. Us vs. them." Or in the immortal words of Yogi Berra: "When you come to a fork in the road, take it!"

The story isn't all bad. Just as Jimmy Carter helped deregulate airlines, Dole oversaw the privatization of Conrail. Moreover, she decries the high level of taxation and speaks with pride of her service as a "lieutenant in Ronald Reagan's army." So despite all the bad signs, might she be a closet free market type?

Nah. For any GOP candidate, damning taxes and blessing Reagan are obligatory gestures, more etiquette than ideology. With Dole, you have to think about the words you don't hear. Ponder her statement on education: "I regard public education as one of the glories of American democracy. Which is precisely why the number one priority of any education reform must be this: to restore our public schools to greatness." Would a real free-market Republican have omitted any mention of private or parochial schools?

At the Transportation Department, Dole's best-known accomplishment was a rule requiring that every new car have an air bag or automatic safety belt. Just imagine if she had headed the Department of Health and Human Services: All refrigerators would come with a "Liddy Light" that would flash if we got too much ice cream.

No wonder a former aide once told *Fortune* magazine, "She's progressive at the core." If she becomes president, we'll probably get what we got in the 1970s: a pro-government agenda clad in polyester fuzzwords.

Dole has one last similarity to Jimmy Carter: the persistence of a childhood nickname. Though she reportedly hates people to call her "Liddy," she's probably stuck with it, at least for the duration of the campaign. "Elizabeth Dole" is a bit long for buttons and bumper stickers. In light of recent costume movies, "Elizabeth" would summon up images of Cate Blanchett or Judi Dench. "Dole" would make people think of Bob, not Elizabeth. And "E.D." would not do, since the initials also stand for "erectile dysfunction." Thanks to a current public service ad campaign for Pfizer, that would also remind people of Bob.

Contributing Editor John J. Pitney Jr. (jpitney@mckenna.edu) is associate professor of government at Claremont McKenna College.

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Control Freaks

Export licensing hurts American companies and doesn't improve national security.

By John J. Miller

Last October "administration officials" boasted to *The New York Times* that history would recognize technology transfers to China "as one of Clinton's most lasting legacies." They suggested that these exports improved national security by aiding the economy, ensuring the United States would keep its place as the planet's single superpower.

Republicans howled. Allowing China to purchase equipment that upgraded its military prowess, they complained, had precisely the opposite effect. Technology transfers indeed may be one of Clinton's "most lasting legacies," but they sure aren't anything to brag about. And now the top-secret report compiled by Rep. Christopher Cox (R-Calif.) and the Select House Committee on Technology Transfers to China is almost ready for declassification. When it becomes public, the White House is expected to take a few hard punches.

The effect has been to cow Clinton. Today, he is reluctant to do the one thing that ought to be a prerequisite for his aides' proud legacy claims. American computer manufacturers and their technological advances are on a collision course with Department of Commerce export controls. Industry officials say that without a fix, they will lose the opportunity to sell tens of thousands of mass-market machines by the end of this year. Even Cox has signaled that his forthcoming report shouldn't stymie free trade. "The committee found that the current export-licensing process is riddled with errors and plagued by delays [and hurts] America's competitiveness in world markets," he wrote in the *San Jose Mercury-News* on March 28. Yet the Clinton administration has made no attempt to modernize the rules governing American participation in the international computer trade.

Current regulations make it a hassle to sell a personal computer with just two Pentium III chips to a buyer in Beijing. Although this is basic Web-enabling equipment, the Department of Commerce prevents easy shipment of these machines to countries considered proliferation risks.

Even strong supporters of free trade can support the logic of restrictions. Nobody wants rogue states or bomb-building terrorists to get their hands on high-tech devices. If security crimps sales, so be it. Powerful computers built by IBM and Silicon Graphics already have found their way into two of Russia's top nuclear weapons labs. China returned a Sun Microsystems machine last year after U.S. officials discovered that it had been moved from the research facility that supposedly bought it to a military outpost far away.

Harsh import controls would set back American companies without improving national security. They could also hurt international pro-democracy movements.

Yet export control rules written just three years ago are rapidly becoming obsolete. In the 1980s, it took a multi-million-dollar supercomputer to do the complex calculations needed to operate a ballistic missile system. Today, a desktop computer running at 450 megahertz is as powerful as the machines used to design America's nuclear weapons. Within a year, Pentium III chips are expected to blaze at speeds of up to 800 megahertz. Under current rules, manufacturers will have to obtain a special export permit from the Commerce Department for every computer containing just one of them before it can be sold to a user in one of the countries deemed a national security hazard.

This red tape does little to make the United States safer. Virtually anybody can purchase computers powerful enough to run a nuclear arsenal. What's more, new developments in hardware and software have made it possible to create clusters of relatively weak machines whose combined energies approach the might of a supercomputer. If legitimate Chinese businesses cannot buy ordinary machines made in America because of licensing delays or outright bans, they will quickly turn to foreign competitors. The biggest beneficiaries of strict import controls in the United States are companies such as Acer (based in Taiwan), Fujitsu (Japan), Legend (Hong Kong), NEC (Japan), Samsung (Korea), and Siemens Nixdorf (Germany) to name just a few.

With foreign sales blocked, American companies will be denied an important source of revenue. According to industry figures, two-thirds of all computers with more than one processor were sold outside the United States last year. Worldwide sales are projected to double by 2002 to nearly 6 million units. Again, about two-thirds of those are expected to be sold abroad.

So harsh import controls would set back American companies without improving national security. They could also hurt international pro-democracy movements. During the 1980s, resistance movements behind the Iron Curtain kept in touch with each other and the outside world by using fax machines, copiers, and primitive computers.

Today, China is trying to squash similar trends within its own borders. Police departments are assigning agents to wander the Internet in search of troublemakers among China's Web users, estimated to number more than 2 million at the end of last year. In December, President Jiang Zemin threatened computer programmers (plus artists and writers) with

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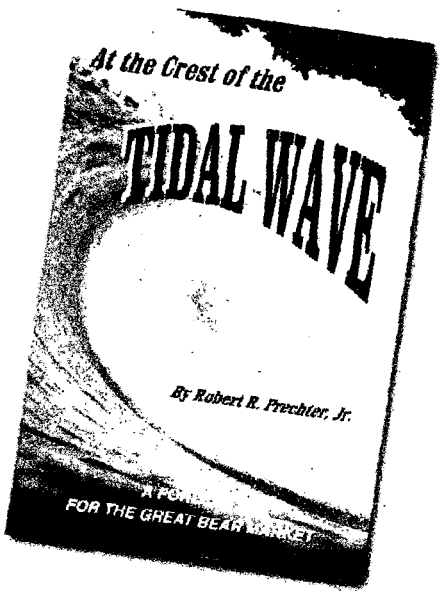

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SCOTT STANTIS
CAN YOU GET THE DOOR? I'M TRYING TO END THE OPPRESSION IN KOSOVO...
BAM BAM BAM BAM BAM BAM
DISSIDENTS
China

stiff penalties if they dared to "endanger social order."

One month later, the government made good on its warning. After detaining software designer Lin Hai for eight months without charges, it sentenced him to two years in prison for selling 30,000 Chinese e-mail addresses to a D.C.-based electronic newsletter for political dissidents. Lin's computers were confiscated, and he was convicted of "inciting the overthrow of state power" by aiding a "hostile foreign organization." There is hardly a better example of how the computer trade actually exports freedom to countries that don't have enough of it.

To monitor computer exports, the U.S. government has created a special measurement that combines speed and power: Mtops, or millions of theoretical operations per second. Exports to American allies—so-called tier 1 countries, such as the Western European nations, Canada, Japan, Mexico, and Australia—face no special licensing requirements. Tier 2 countries (there are 106 of them in Africa, Asia, Central and Eastern Europe, and Latin America) encounter restrictions only for machines running at 10,000 Mtops—still rather advanced by today's standards. Exports are flatly prohibited to tier 4 countries, such as Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Tier 3 countries are the most problematic—and controversial. Their ranks include China, India, Israel, Pakistan, and Russia. Computers that perform at more than 2,000 Mtops can expect export delays. Those running at 7,000 Mtops are banned outright. When these thresholds were created in 1996, they represented fairly futuristic devices. Today, however, ordinary business machines are starting to surpass them.

Determining Mtops thresholds is tricky, if not arbitrary. "It's useful to think of a pyramid," explains Dan Hoydysh of Unisys. "You have to control the export of high-performance computers at the top and release mass-market machines at the bottom. The problem is the bottom keeps getting more sophisticated." A report by the General Accounting Office last September said computers operating at "over 2,000 Mtops are not readily available to tier 3 countries from foreign sources without restrictions." Yet that conclusion may already be out of date—or at least it looks like it could be by this October.

The process for raising the thresholds is simple enough and doesn't even require legislative action. The administration must notify Congress of its intentions and submit a report that explains its reasoning. Then, 180 days later, the new standards take effect. Because computer companies are worried about sales this fall, the administration should have set the clock ticking in late March or early April. So far, however, there have been no announcements.

The White House has been reluctant to address this matter because it worries Congress won't sit still. China is a major vulnerability for the Clinton administration. From the 1996 campaign finance scandals to the latest spy revelations from Los Alamos, the Democrats don't have much political capital to burn if Republicans start pointing fingers. The White House would prefer to have computer companies lobby Congress for a few months, meet privately with congressional leaders sometime this summer, and beat this fall's deadline by quietly agreeing to ignore the 180-day waiting period.

Yet this would merely solve a short-term problem and put off another reckoning. Technology will begin to push against a new set of Mtops thresholds before long. A better idea is to scrap the current regulations and adopt a relative standard that forbids the export of any supercomputer—defined as one of the 1,000, 2,000, or 3,000 most powerful machines in use at any given moment. This solution would represent a permanent fix that allows American companies to sell mass-market products but also forbids the latest technology from reaching the hands of Kim Il Sung in North Korea.

What the country most needs, however, is a noisy debate over the interplay of technology, trade, and national security. The United States lives in a world made more dangerous by technology. At best, unilateral export controls will only slow the rate at which potential enemies can acquire powerful computers. At worst, they will deny American companies an important source of revenue without also improving Americans' safety.

The Chinese government will ultimately get the computers it wants, and there's little the U.S. government can do to stop it. Better to think about how to deal with those systems once they're in place—by building an anti-ballistic-missile system, for example. Rather than deny the inevitable, we should prepare for it. ◆

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SCOTT STANTIS

Is It Time to End the War on Drugs?

by Jacob G. Hornberger

Hardly a week goes by without some mention in the media of the war on drugs. Record drug busts, money-laundering schemes, increasing drug abuse, gang warfare, thefts and robberies, political corruption, infringements on bank privacy, searches and seizures, confiscation of assets, arrests, convictions, and incarcerations.

If the overall situation — both with drug usage and the drug war — keeps getting worse, shouldn't Americans be asking some fundamental questions: How long is all of this going to continue? How bad do things have to get before people finally recognize that the war on drugs has failed? How many infringements on individual liberty and privacy must still be tolerated?

The policy question is: If the war on drugs has admittedly failed to achieve its objectives after decades of warfare, and if the situation has continued to worsen over the years, then why shouldn't this government program simply be terminated?

Of course, the basic moral question is: Why shouldn't an individual be free to engage in self-destructive behavior? Isn't that the very essence of human freedom? If a person is not free to do bad, harmful things to himself, then how can he truly be considered free? Under what moral authority does the state regulate and punish an adult for doing something bad to himself?

The true test of a free society is not whether people are free to engage in what the state defines as "responsible" conduct. After all, even the Chinese and North Korean people are "free" by that standard. The real test of a free society is whether an individual is free to engage in irresponsible behavior, so long as it does not interfere, in a direct and forceful way, with the ability of others to do the same. In other words, as long as a person doesn't murder, rape, steal, burglarize, defraud, and the like, freedom entails the right to do anything a person wants, even if it's the most irresponsible and self-destructive thing in the world.

There are also pragmatic reasons for ending the drug war. For one thing, even if it were capable of succeeding, the price in terms of liberty and privacy would be high. After all, they can't even keep drugs out of prisons. How would they finally keep them out of people's homes — with government cameras and drug-sniffing dogs and children who are taught to rat on their parents?

Moreover, when a person desires or needs some drug, making possession or distribution of the drug illegal is unlikely to achieve its intended result. Since making drugs illegal restricts supply, the price is artificially forced upward. Drug users are usually going to do whatever is necessary to get the money to pay for their drug. Thus, it is not a coincidence that burglaries, robberies, muggings, and thefts increase when drugs are made illegal. When was the last time you saw a wino stealing money to pay for wine?

The most effective way to treat drug addiction is through therapy, not incarceration. That's why Alcoholics Anonymous has been so effective in treating alcohol abuse. But therapy entails an addict's freely talking about his addiction and the underlying reasons for his addiction. By making drug use illegal, the drug war has the opposite effect — it makes it much more difficult for people to come forward and openly seek treatment.

Ironically, ending the war on drugs would be more likely to achieve the type of society in which most of us would like to live: a peaceful, harmonious, law-abiding one. Does that mean that people wouldn't take drugs? Of course not. But it would mean that prices would drop and that drug users would have less incentive to steal or rob to get the money to pay for the drugs. It would also enable addicts to talk freely about their addictions, openly admit they have a problem, and seek treatment.

Most important, ending the war on drugs would move us in the direction of replacing the paternalistic state, and its massive infringements on liberty and privacy, with a government whose powers are limited to protecting the right of the individual to live his life as he chooses so long as he respects the right of everyone else to do the same. Isn't this the principle on which our nation was founded?

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Facts of Life

What Bill Clinton doesn't know about sex

By Alejandro Castellanos

Will Bill Clinton redeem himself? If anyone can, it is this president. No political figure has reinvented himself with such regularity or bounced back from more profound depths. He is the candidate of the perpetual second chance.

True, this would be the mother of all comebacks. In the waning days of a lame-duck term, undone by his own undisciplined appetites and relentless mendacity, Clinton is trusted less—well, less than even he has ever been trusted. Yet to rescue himself from historical disgrace, the poor man must attempt what he has never been trusted to do: He must lead America. That is something new for a president who has instead been led by public opinion surveys—surveys where he has found the teeny, mosquito-like ideas that have buzzed from his White House in swarms to nip unsuspecting Americans.

School uniforms. More police. Patching leaky school roofs. Bill Clinton has found small ideas just his size. When this smallest of presidents told us "the era of big government is over," he was not abandoning statism. He was only declaring his own impotence. Clinton was acknowledging that, try as he might, he just wasn't powerful enough to impose a really big government power grab, such as nationalized health care, on the country.

So our micro-president did the next best thing: He kicked big government over, shattering it into thousands of tiny shards. Watch your step; Clinton's micro-government proposals are everywhere. Who but Bill Clinton could simultaneously make government smaller and give us a lot more of it?

Even as we speak, the Clinton-Gore team is on its way to a neighborhood near you, with urban planners and traffic management bureaucrats. They have a plan for your car. A plan for your house. A plan to fix your suburbs. They are guaranteeing you more time with your children. A grassy green park to go to. Protection from suburban sprawl.

And now Clinton has found new accomplices to help him expand the power of the state. Driven to get something, anything, done, Clinton is moving to get things done with the Republican Congress. Embarrassed by the impeachment imbroglio, they also are determined to show voters what they can accomplish.

This is a time for all good Americans to tremble. How can we gain the president's attention? Perhaps we should present our case against ever-expanding government in a way Clinton and his advisers can understand.

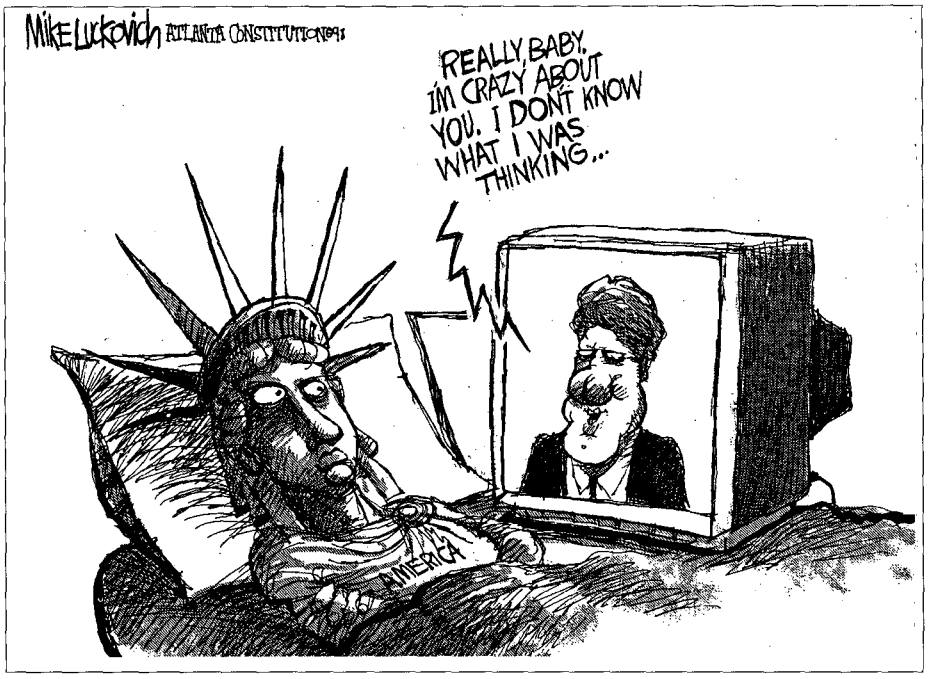
Let's talk about sex.

Hell of a mess, isn't it? Risky and inefficient. The eternal conflict between the sexes. The time wasted on courtship. So many failed relationships and so few successful ones. Why does Mother Nature spend such energy on the mating dance—the gravitational tug of brightly colored feathers or the sequined evening gown?

Half the genes here, half the genes there. Finding a way to get all those little genes together. Is it all necessary? Why are there two sexes? Wouldn't it be more efficient if, like the amoeba, we had but one? Perhaps a "single-payer" sexual system would save us a lot of trouble. Surely someone in government could contrive a less troublesome method of reproduction, designing the thing from scratch.

Biologists have great jobs: They get to think about sex and explore such questions. Their answers, conveniently, boil down to this: Inefficiency and failure have advantages. For all the uncertainty of sex, there are vast benefits in its tumult.

Through the rich differences between male and female, the reshuffling and recombining of genes, life finds its way forward. Male meets female, they shuffle the genetic cards, and bang! Amphibians walk out of the water. Monkeys develop opposable thumbs. Man learns to walk upright. Shuffle the cards again, and sex finds pathways around diseases and mutating viruses that would otherwise extinguish us. Another genetic shuffle, and man learns to use tools: a piece of flint, the



MIKE LUCKOVICH

spear, the credit card.

The chaotic jumble of sex is nature's creative secret. It allows change, adaptability, and advancement. The cost, however, is astounding. For every evolutionary change or mutation that succeeds, there are hundreds, perhaps millions, of dead-end journeys. One eagle survives a thousand dodo birds.

But the *alternative* to nature's undisciplined creativity is rigidity, paralysis, and decline. Asexual reproduction is short and stagnant stream that leads no farther than the amoeba. It is a shame no one ever took Bill Clinton out behind the barn for the one important lesson about sex he has missed—and explained how it applies not just to the birds and bees but to society and economics as well.

Nature advances through the wasteful confusion of sex. Economies advance through the noisy jumble of the free market. Science advances not just through reason but in random leaps of inspiration. Some species and businesses and scientific experiments fail. Others march forward. Life advances not despite chaos but because of it. There is no chance for success, it seems, where there is no risk of failure.

When government tries to rig the game in advance, Mr. Clinton, it interferes with this process of trial and error. Statism is the enemy of progress. It is the adversary of all growth except its own. Government programs are poured cement; once they flow into an economy and set, the man-made stone hardens forever.

The cost? It is easy to see what taxes take out of people's pockets. But the growing state imposes a larger penalty, invisible and silent: It taxes our future. Like the farm boy who has never seen the ocean, we do not miss the businesses never started for lack of capital, the jobs never created because of government regulation, the family that could have made it with less economic pressure. Yet we are all poorer in their absence. Big government taxes what we could be, much more than what we have.

A truly progressive government must leave its citizen-explorers alone on life's perilous but promising journey, free to fail or succeed. Freedom, Mr. Clinton, is as perilous and productive as sex.

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Crime Stoppers

Frustrated by incompetent policing, South Africans are turning to private alternatives.

By Jim Peron

One almanac recently described South Africa as "the world's most dangerous country" outside official war zones. In the last decade murder, rape, and robbery rates have all doubled. According to official statistics for 1997, South Africa had 63 murders and 134 rapes per 100,000 people, compared to seven murders and 36 rapes in the United States. There were 258 car thefts per 100,000 South Africans, 866 housebreakings, and 601 assaults. Appalling as these numbers are, they probably understate the crime problem substantially, since polls indicate that most South Africans do not trust the police. A 1997 survey by the Human Sciences Research Council, a quasi-government agency, found that about one-fifth of crime victims do not contact police.

The reluctance to report crimes may be partly due to the fact that in the last few years police participation in crime has skyrocketed. In 1997 a total of 15,326 police officers, almost 14 percent of the national force, were charged with crimes. Meanwhile, officials of the African National Congress, the ruling party, have been implicated as members of criminal gangs responsible for dozens of armored truck heists.

The police force has an absenteeism rate of about 30 percent a day. The government is able to find a suspect and get a conviction in only 15 percent of murders, 7 percent of rapes, and 5 percent of burglaries. (By comparison, the FBI reports U.S. clearance rates of 66 percent for murder, 51 percent for rape, and 13 percent for burglaries.) To make matters worse, President Nelson Mandela celebrated his 80th birthday last year by releasing 9,000 criminals early. The next day two of them murdered an elderly couple. Another released convict, who had been imprisoned for raping a 50-year-old woman and then hacking her to death, promptly tied up and raped his two nieces, 13 and 14, and went on to rape at least five other children.

Given the government's manifest failure to deal with surging crime, many South Africans are turning to private alternatives. These include not only gated communities for the wealthy but security services and self-help arrangements that benefit the middle class and poor. They have achieved striking successes, sometimes despite active opposition by the government.

The Residents Association of the Honeysuckle, an upper-class white area of Johannesburg, has raised about $16,000 to secure the neighborhood with gates and guards. It has also taken over park maintenance and installed its own street lights. Since residents took these actions two years ago, says association Chairman Giovanni Santoriello, the neighborhood has not had a single incident of crime.

In neighboring Sandton, also a wealthy area, residents are experimenting with road closures, stopping through traffic with barriers. Steve Margo of Sandton Precinct, a civic group, says: "The closures are working. People are now working together, walking in the streets, jogging and riding bicycles in safety." But ANC officials in the Johannesburg government charge that such measures are inherently racist because they divert crime from white areas. As closures proliferate throughout the suburbs, the government has said it will send in armed officials to remove them unless they are first approved by the city—a process that can drag on for years.

In Kensington, a middle-class Johannesburg suburb, residents have contracted with a private security firm, for armed protection. The firm hired about 90 previously unemployed men to patrol the streets, covering some 3,500 homes. Each street has its own bank account, and residents contribute to pay for the guard on their street.

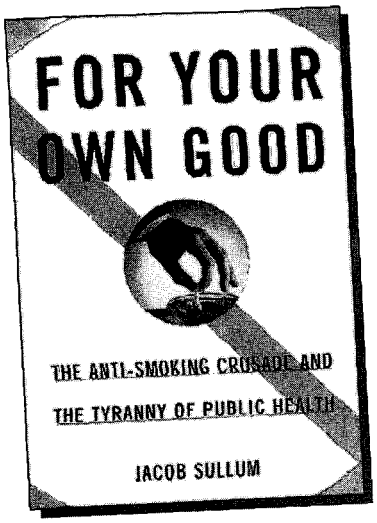
Kensington resident Peter Hugo had been burgled eight times in 10 years but says that since the guards were hired last year the only crime reported in his area has been the theft of a car battery. Hugo also found that his household insurance rate fell by 25 percent. Residents are saving 150 rand ($27) to 250 rand ($45) a month as a result of this effect. "My contribution to the guards is mostly covered by the money I save on insurance," Hugo says. *The Johannesburg Saturday Star* reports another side effect of the program: "Before the new system, neighbors were largely strangers. Now, most people know each other and there are regular street parties."

But as with the street closures, the government is trying to stop residents from addressing the crime problem on their own. The national Security Officers' Board (aptly known as the SOB), which regulates private security companies, wants to close down the Kensington program. The SOB contends that the security guards, who haven't expressed any unhappiness with their jobs, are underpaid. "I don't care that this company has reduced crime," says SOB head Don Masterson, "because they are doing it by breaking the law themselves."

The SOB has raided the security company's offices, seizing its records. Last year, an SOB official turned up unannounced at a private meeting of Kensington residents, who ordered him out. In response, the SOB has filed a defamation suit against one resident and brought charges of obstructing justice against another, Glynn Evans, who observes, "At least we give people jobs, even if their salaries are not great."

Car thefts and armed hijackings are common in South Africa, particularly in Johannesburg. Reported car hijackings in South Africa increased from 10,389 in 1995 to 13,011 in 1997. During the same period, truck hijackings rose from 1,692 to 4,296. One ANC official denied there had been a real increase in hijackings, claim-

SURGEON GENERAL'S WARNING: This Book Contains Ideas And Information That Are Hazardous To The Health Of The Anti-Smoking Movement.



Under the banner of "public health," tobacco's opponents say the government has an obligation to eliminate smoking. In ***For Your Own Good,*** award-winning journalist Jacob Sullum argues that such a use of state power is illegitimate and dangerous, threatening the freedom of anyone who dares to trade longevity for pleasure.

"Even Republicans who claim to be diehard protectors of liberty have proven flexible when the object of that liberty is sufficiently unpopular. For a cogent and thorough explanation of this contradiction, Jacob Sullum's book *For Your Own Good* is a must-read." — ***Washington Post Book World***

"Jacob Sullum...sees [tobacco legislation] as a decisive infringement on the right to smoke and a vast extension of what he calls 'the public health movement,' which seeks to regulate our pleasures and legislate our risk-taking down to the smallest details of what we ingest or enjoy. Whatever you may feel about smoking, you can't help being chilled by the implications of this newly triumphant public health philosophy." — ***The Wall Street Journal***

"Finely reasoned...meticulously logical...fair and balanced...It is to Mr. Sullum's considerable credit that he has made us even think about totalitarianism in this most unlikely context." — ***The New York Times***

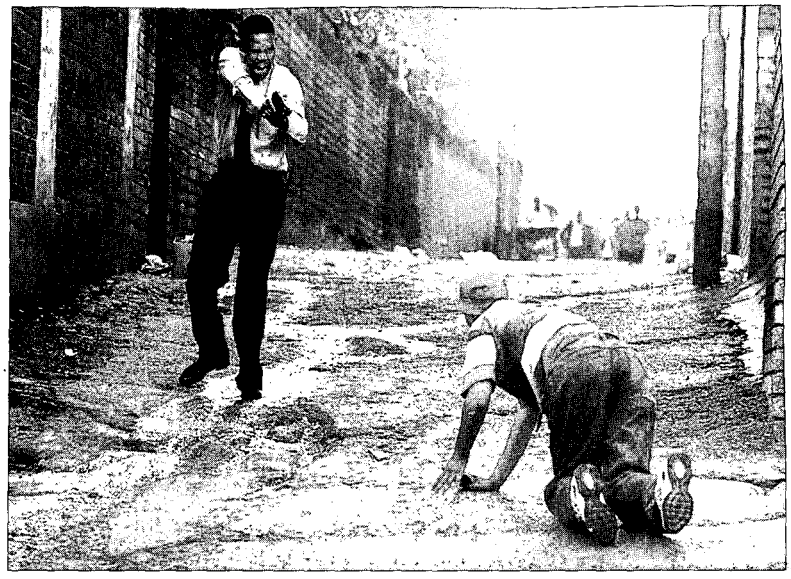
"[Anti-smoking] hysteria is more than repugnant, it is false. In *For Your Own Good,* a lucid and superbly researched new book on the antitobacco jihad, journalist Jacob Sullum pinpoints the deceit." — ***Boston Globe***

"Sullum is a thoughtful and remarkably articulate proponent of a position that it behooves all members of the health care professions to understand and contemplate." — ***The New England Journal of Medicine***

Available at bookstores, or visit www.reason.com/owngood.html.

ing that "whites" were making fraudulent reports to collect insurance payments. Another official blamed the hijackings on what he described as the apartheid government's policy of giving hijackers immunity from prosecution. He didn't explain how a government that has been out of power for five years could give immunity to people committing carjackings now.

In response to the wave of car thefts, shopping malls and business districts in South Africa have hired security guards to patrol their parking lots. These guards are paid not by the malls or the stores but by tips from people who park in the lots. The pay must be adequate, since there seem to be plenty of security people in every lot of any size.



Street Justice: An off-duty reservist apprehends an alleged thief in Johannesburg. South Africans are turning to private forces to supplement inadequate policing.

AP / WIDE WORLD PHOTO

One high-tech solution to carjackings is satellite tracking systems. A car owner pays a monthly subscription fee for the service, which requires a transponder planted somewhere in the vehicle. If the car is stolen or hijacked, the theft is reported to a central office. The satellite immediately begins tracking the car, and security personnel and police are called in. Recoveries within 15 minutes of the theft are not uncommon. Depending on the value of the car, the cost of the tracking system may be covered by savings on auto insurance.

Like car owners, farmers have responded to crime with a new alarm system. The murder rate on South African farms, which are often targeted by criminal gangs, is 120 per 100,000, much higher than the national average. Farmers have armed themselves, installed electric fences, and purchased guard dogs, but criminals continue to find ways around these measures. Now farmhouses have been turned into fortresses, with independent radio systems linking them to other farms in the area. If a farm is attacked, an alarm is raised, and other farmers pick up their guns and come to the rescue.

A different sort of anti-crime association has emerged in downtown Johannesburg. The Central Johannesburg Partnership, a nonprofit corporation formed by business owners, provides "private urban management services" in four downtown areas totaling 50 blocks, or 10 percent of the inner city. The services include security, street cleaning, vending management, and miscellaneous maintenance tasks, such as painting light poles and electric boxes. Operating with a yearly budget of about $1 million funded by contributions from the businesses it serves, the CJP employs about 100 security guards and 30 street cleaners, with a office staff of six.

The first area managed by the CJP was the Central Improvement District, created in late 1993. In 1992 that area averaged 27 muggings a month; in all of 1997, by contrast, it had only three. Most of the people who live and work in this neighborhood are black; many are middle class, but a significant number are quite poor. The CJP's professional services contrast sharply with the protection available in many black townships, where residents have almost no confidence in the police and routinely take the law into their own hands, administering "street justice" with beatings.

CJP Chairman Neil Frasier says he doesn't have crime statistics for areas of Johannesburg outside the organization's coverage, but he is confident that "we are significantly lower." Almost every category of crime has dropped in the Central Improvement District: Armed robberies in 1997 were down 63 percent from the year before, muggings were down 73 percent, and pickpocketing was down 80 percent.

Frasier says the key to inner-city crime prevention is "the highly visible presence of security." The CJP guards all have uniforms; to increase their visibility, they wear yellow hats, belts, and arm bands. During the first six months of 1998, they arrested more than 200 people for crimes ranging from armed robbery to hijacking and turned them over to the police.

In one of the more spectacular arrests, CJP guards heard gunfire and rushed to intervene in a gang attack on an armored vehicle carrying cash. The attackers fled, but the guards pursued them. Three suspects were arrested and a fourth refused to surrender, shooting himself in the head.

Sheri Lambert, who works in the Central Improvement District, says "one gets to know the individual guards on one's usual 'beat' going from parking to work in the morning and evening." Manny Da Rocha, of Quenchers Pub & Grub, found that this personal touch makes a big difference. Last year, he recalls, the security guard for his building (not a CJP employee) "enlightened me that my vehicle, driven by a stranger, was moving down the street." Da Rocha ran outside and saw one of the CJP guards "jumping into the vehicle, causing the driver to flee in fright to another vehicle waiting closeby." The CJP guard "informed me that he knew my vehicle and when he saw a stranger behind the wheel, he realized it was being stolen."

If only South Africa's politicians reacted as swiftly and effectively to crime. ◆

Jim Peron (peron@global.co.za) is an American writer who has lived in South Africa for six years. He is the author of Die, the Beloved Country? *by Amagi Books.*

Air War

Why Congress wants to re-regulate airlines

By Ryan H. Sager

Rep. Bud Shuster (R-Pa.) is mad as hell at the airline industry—and he's set to teach them a lesson as only the chairman of the House Transportation and Infrastructure Committee can. In February, when nasty contract negotiations between American Airlines and its pilots temporarily shut the carrier down and left thousands of passengers stranded, Shuster loudly declared "a pox on both their houses" and then unveiled the legislative equivalent of a plague blanket: an "Airline Passenger Bill of Rights." Divining that airlines "don't give a damn about the traveling public," he observed, "I think that you need to do whatever it takes to get their attention."

Sens. John McCain (R-Ariz.) and Ron Wyden (D-Ore.) similarly want to get the industry's attention. Like Shuster, they have sponsored legislation—and held highly publicized hearings in March—aimed at "improving" airlines' customer service. The McCain-Wyden bill would require airlines to warn passengers if a flight is oversold and give them 48 hours after buying a ticket to ask for a refund. Shuster's Passenger Bill of Rights would go further, requiring airlines to compensate passengers for twice the value of their ticket if they are kept waiting on the runway for more than two hours, with compensation increasing proportionately for each extra hour. Shuster's bill would also prohibit airlines from using a single flight number if they know passengers will have to change aircraft and require the Department of Transportation to track flight cancellations to determine whether they are being made for economic rather than mechanical reasons.

While the proposed rules are mostly petty on their face, they signal an important, worrisome shift in Washington with regard to regulation. If the airlines—which have delivered demonstrably safer, cheaper, and more plentiful flights since deregulation—can come under such an attack, what industry is safe? It's also more than a little ironic that Republicans are leading the charge on the issue: Since airfares were deregulated by a Democratic Congress and president two decades ago, there have been consistent calls for re-regulation, typically from left-of-center pols who simply dislike anything smacking of free enterprise. Republicans have traditionally been the major supporters of leaving airlines to their own devices. Now, still reeling from the Clinton impeachment proceedings and the negative poll numbers they generated, the GOP sees "passenger protection" as a feel-good, populist way of showing they're in touch with what "really matters" to voters.

There's little doubt that the Shuster and McCain-Wyden bills are extremely photogenic: The March Senate hearings, for instance, were a parade of teary-eyed passengers recounting bad experiences and incensed travel agents and industry analysts lambasting supposedly unresponsive airlines. There's also little doubt that increased governmental involvement will do little to remedy the airlines' reputedly rotten customer service or increase the industry's overall performance record (after all, enforcing good customer relations and workplace efficiency are hardly public-sector strong suits). Indeed, it's unlikely that the pending legislation will accomplish much more than opening the door to greater regulation down the road.

If the airlines—which have delivered safer, cheaper and more plentiful flights since deregulation—can come under attack, what industry is safe?

But the bills are misdirected in another, more insidious way: They fail to even address those parts of air travel that are still under federal control—including the air traffic control system and the assignment of airport landing rights—and how those aspects contribute to consumer dissatisfaction by limiting the competition that generates new and better ways of doing things. Instead of passing legislation aimed at punishing airlines for things that are largely out of their control (such as snow-related delays), Congress should instead be taking a serious look at finishing its deregulation of the industry.

In 1978, President Jimmy Carter signed the Airline Deregulation Act, relieving the government of its role in deciding everything from airfares to the sizes of sandwiches served during flights. Since then, by virtually all accountings (including the government's own), things in the airline industry have gotten progressively better. Safety, which skeptics predicted would immediately take a backseat to profits once airlines were no longer under the government's thumb, has improved dramatically. 1998 marked the first year on record without a single life lost on a scheduled U.S. airliner. As stunningly, air travel, once out of reach of the average American, has gone mainstream. According to Northeastern University economist Steven Morrison, between 1978 and 1997, airfares dropped by 40 percent in real terms, leading to a doubling of passengers. In 1995, reports the General Accounting Office, departures were up by 50 percent for small airports, 57 percent for mid-sized ones, and 68 percent for large ones.

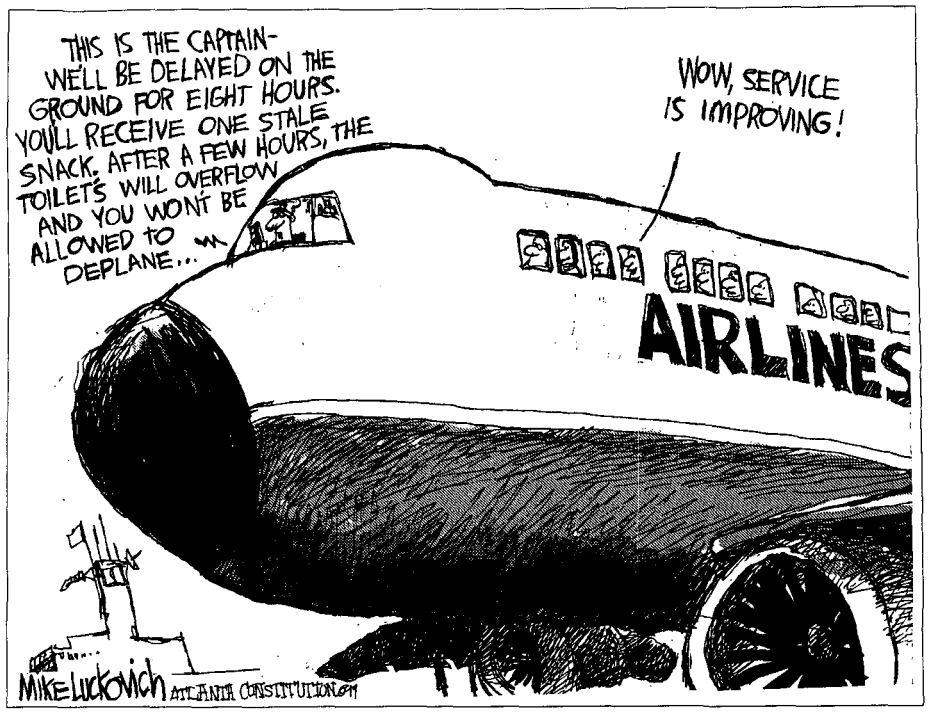
The major hook for the Shuster and McCain-Wyden bills is last year's reported 28 percent rise in passenger complaints. But that increase is not necessarily a bad sign, says Brookings Institution economist Clifford Winston. "The increase in complaints actually speaks to the success of deregulation," argues Winston. As many more people have started flying, he says,

planes have gotten more crowded and people have gotten testier. Winston believes that if the airlines are guilty of anything, it is being too timid in expanding capacity—buying more planes and adding more flights. The carriers are still adjusting to deregulation, he says, and they are worried about the possibility of a recession that would leave them with empty seats.

If increasing capacity is the key to improving the flying experience, then it's unclear what the government can do in terms of customer service mandates, Winston contends, adding that airlines already compete on the basis of meals, frequent-flyer promotions, friendly service, and the like. The easiest way to boost capacity, he points out, is to throw out restrictions on foreign investment in U.S. airlines—restrictions that date back to the days before deregulation.

Currently, foreign investors cannot own more than 25 percent of the voting stock of a U.S.-based carrier, and foreign-owned airlines cannot fly passengers between U.S. cities. This effectively shields domestic carriers from a major source of competition and has thus prevented innovation in the domestic airline industry. Last year, for instance, Richard Branson, the British owner of Virgin Atlantic Airways, wanted to invest $200 million in a low-fare airline based in New York. Since he is not a U.S. citizen, however, he was blocked from entering the market. That result may have helped domestic airlines, but it clearly did nothing for U.S. passengers.

There are two other major ways in which the government continues to regulate air travel. The first involves terminal and gate assignments at airports. Airports are operated mostly by municipal governments and are run on a break-even basis, required by federal law. Prior to deregulation, cities locked in tenants with long-term leases to guarantee a source of revenue to pay off airport bonds. Airlines agreed to 30- or 40-year leases in exchange for things like veto power over terminal expansion, which gave them the ability to keep potential competitors out or, at least, limit the number of gates they could use. Despite deregulation, airports still operate in basically the same way. The result is that airlines that are already ensconced in a given airport have effective control both over expansion plans and over who gets to use what gates at what times. Under such a system new airlines, when granted space at all, are typically leased gate space at off times and high prices.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An obvious way around such problems is to privatize airports. Turning airports into for-profit enterprises would foster far greater competition and efficiency in local markets. Airports might allocate gates based on day-by-day, if not hour-by-hour, demand. In 1987, Britain privatized two major airports, Heathrow and Gatwick, with great success: Those airports' landing fees and gate charges are lower today in real terms than they were 12 years ago; passenger and cargo volumes are up, as is commercial revenue. At the same time, operating costs for the private operators are significantly lower. For similar reforms to happen in the United States, Congress needs to ease federal restrictions on municipalities trying to sell or lease their airports.

The air traffic control system, which is run by the Federal Aviation Administration, is similarly stifled by government oversight. John E. Robson, chairman of the Civil Aeronautics Board from 1975 to 1977, dismisses the Shuster and McCain-Wyden bills as wastes of time. "If they're going to fix every service-level imperfection," suggests Robson, who helped conceptualize and implement airline deregulation, "they might as well get into car rentals...drug stores, dry cleaners, and everything else." Robson thinks Congress needs to overhaul the air traffic control system. Problems in the air, he says, lead to many, if not most, of the delays that have passengers so riled up.

While the number of passengers has more than doubled, from 275 million to 600 million, since deregulation, the numbers of computers and air traffic controllers have not increased proportionately. In 1998, roughly one-quarter of all flights by major carriers were delayed, mostly because of the sluggish air traffic control system. In its current condition—relying on obsolete computers and radar systems—the system simply cannot move passengers any faster while maintaining safety. New, proven technologies that would allow planes to safely take off and land closer to each other—and, hence, allow more flights—have gone begging for takers.

Canada, New Zealand, and Germany all provide models of how modernization can cut costs and increase efficiency. In each country, government air traffic control systems were transformed into corporations that are operated and funded directly by the airlines that use them. Germany corporatized its system in 1993 and reduced air traffic delays by 25 percent by 1997. New Zealand corporatized in 1987

MIKE LUCKOVICH

and reduced user fees by 30 percent during the next 10 years.

Switching to such a system would eliminate the major air traffic control bottleneck: landing slots assignments. At crowded airports, the FAA arbitrarily allocates a certain fraction of landing slots to large, national airlines, another fraction to smaller, regional airlines, and the rest to private planes. The FAA also determines the fees planes pay to land based on the weight of the aircraft. For instance, a four-person private plane landing at the busiest hour of the day will pay only a fraction of what a 375-passenger Boeing 747 would. That creates delays as scarce landing resources are used inefficiently. Recalculating fees—and allowing for-profit airports wider latitude to assign gate slots based on peak-pricing principles—would both make better use of scarce resources and allow carriers to crack new markets.

However much such reforms might help make air travel safer, cheaper, and more pleasant for consumers, they are not even on Congress's radar screen. In their place are feel-good proposals such as the McCain-Wyden bill and Bud Shuster's Passenger Bill of Rights (which, given its provision penalizing carriers for delays, actually gives airlines an incentive to put planes in the air even when there are safety concerns). Indeed, Vice President Al Gore, whose interest in transportation issues led to his recent call for a national traffic hotline, is already on board as a way of furthering his own chances for the White House in 2000. Given all that, it seems likely that some version of a "passengers' bill of rights" will be one of the few laws passed by Congress in the period before the presidential race gets fully under way.

More's the pity. Such legislative activity does not simply obscure the larger, overwhelming success of airline deregulation and direct attention away from where deregulation is still needed. By cracking open the door to more expansive regulation of an industry that has boomed without old-style government oversight, it suggests that few battles for limited government ever stay won for very long. ◆

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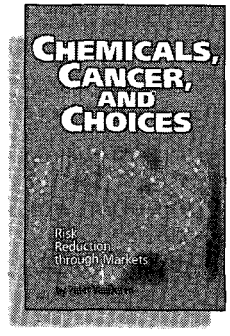

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Benighted Elite

Postmodernist critics of science get their comeuppance.

By Walter Olson

Some Navajo schoolchildren, like many other children, have trouble in math class. According to an article published in a leading journal for mathematics educators, one reason may be that "the Western world developed the notion of fractions and decimals out of a need to divide or segment a whole. The Navajo world view consistently appears not to segment the whole of an entity." Teachers in the rural Southwest might therefore want to begin with concepts more "naturally compatible with Navajo spatial knowledge," such as "non-Euclidean geometry, motion theories, and/or fundamentals of calculus," and de-emphasize or postpone "segmentation...into smaller parts."

One of the many high points of the essay collection *A House Built on Sand: Exposing Postmodern Myths About Science* (Oxford University Press) is watching the volume's editor, Indiana University philosopher of science Noretta Koertge, struggle to keep her patience as she apprises readers of such developments. The notion of teaching calculus before fractions is "quite astounding," writes Koertge, for reasons that begin with the difficulty of expressing the slope of a line, one of the fundamentals of calculus, in any way other than by using a fraction or decimal. And while well-meaning teachers puzzle out such difficulties, Navajo children are presumably supposed to grow up without learning how to compute sales tax.

The notion of a special "Navajo way of knowing," assuredly more spiritual and holistic than European ways, is just one of an array of by-now-familiar "standpoint epistemologies" associated with the idea that, as Koertge puts it, claims of fact "are always to be understood as a product of the culture, gender, ethnicity, [or] class of the observer who made them." Aside from Afrocentrism, there are such developments as "female-friendly science," some of whose supporters have proposed starting out girls in physics class on the study of wave phenomena or fluid mechanics, which they might find more congenial than the motions of "those darned old rigid bodies." (The phrase is Koertge's; in the 1994 book *Professing Feminism: Cautionary Tales From the Strange World of Women's Studies*, she and co-author Daphne Patai brought to light many similar follies). Most widespread of all such doctrines is postmodernism, which treats assertions of scientific fact as indeterminate texts constructed by readers. All these various streams converge to form the body of work known as the "new sociology of science," a.k.a. Science and Technology Studies (STS) or simply Science Studies, brought to many readers' notice for the first time in Paul Gross and Norman Levitt's 1994 exposé *Higher Superstition: The Academic Left and Its Quarrels With Science* (Johns Hopkins University Press).

Academics making careers in "Science Studies" often betray a lack of basic knowledge of the fields they presume to deconstruct.

Gross and Levitt's polemic against "hermeneutic hootchy-koo" is so spirited that you might consider it overdrawn, until you check out what leaders of Science Studies have to say on their own behalf. Quite a few are fond of asserting that critical observers of science should stay agnostic as between, say, astronomy and astrology. "What makes a belief true," declares one prominent figure, Trevor Pinch of Cornell University, "is not its correspondence with an element of reality, but its adoption and authentication by the relevant community." After all, "many pictures can be painted, and...the sociologist of science cannot say that any picture is a better representation of Nature than any other."

"The truth value of scientific knowledge is not necessarily at stake for its STS researcher," agrees Marianne de Laet of Columbia University in what is billed as "an insider's perspective" on the field in the Columbia Webzine *21stC*. "Most of its practitioners subscribe to some form of subjectivism....For them, material reality is not ready-made, independent of the knower, waiting to be discovered." "Science is politics," adds the editor of the journal *Science As Culture*.

One consequence of such ideas is to make newcomers think it less urgent than they might once have to obtain a thorough grounding in scientific literacy—after all, the concepts are all "contestable" anyway, right? Writing in *The Nation* two years ago, Barbara Ehrenreich and Janet McIntosh recounted an incident at an interdisciplinary conference on the emotions in which University of Michigan psychologist Phoebe Ellsworth ventured some favorable comments about the experimental method. Several audience members promptly rose to criticize her for collaborating with a methodology so identified with white Victorian males. Ellsworth allowed that she too had problems with some of those dead males but noted that they had laid the groundwork for such crucial accomplishments as the discovery of DNA. Came the retort: "You believe in DNA?"

Academics making careers in Science Studies may know better than to carry fact skepticism quite that far, but, according to the various scientist-contributors to *A House Built on Sand*, their basic knowledge of the fields they presume to deconstruct is often woefully lacking. Bruno Latour of École des Mines in Paris, by some accounts

the leading figure in the field, commits "crude factual blunders." French theorist Luce Irigaray's critique of the gendered nature of the physical sciences contains "preposterous" assertions, while a hapless professor of English who attempts to popularize Irigaray "misconstrues every one of the mathematical and physical issues she addresses." Histories of the scientific method which contrive to portray alchemy as somehow in tune with women's needs, while pouncing on occasional sexist metaphors to malign Francis Bacon and other forerunners of the modern method, are at best perversely selective. Supposed feminist insights into the mechanism of egg fertilization turn out to be spurious in the extreme (though they fool *Newsweek*). And even the most careful works in the field—Andrew Pickering's 1984 *Constructing Quarks* receives some mild praise—don't prove what their authors think they do.

Some of this material will be of interest mostly to specialists, but it serves as background when the book takes up the question of what effect all this has had on the real world. Few practicing scientists, apparently, pay close heed to the Science Studies sideshow, and it would be easy to dismiss it as just a form of academic self-entertainment, especially given the jokey stance of many in the field, who often deny that they're really against science and instead claim to view it affectionately as a "bumbling giant" (an "attitude of tolerant superiority and epistemological condescension" which, as Koertge scathingly puts it, suggests that "we are now too sophisticated to be moved by the intellectual ideals or accomplishments of the last three centuries"). Yet Science Studies has had real influence.

To begin with, as the editor contends in one of the book's final essays, social constructivism has had a significant effect on science pedagogy, not least by encouraging curriculum makers "to substitute courses 'about' science for courses *in* science." "After taking this course," reads one catalog description, "the student will be able to: 1. Describe the political nature of mathematics and mathematics education. 2. Describe gender and race differences in mathematics and their sociological consequences..." After enrolling in another politicized course, some students turned in heartfelt comments saying that they were "relieved to learn it was not their fault that they had previously not done well in mathematics."

Also "particularly vulnerable to the blandishments of postmodernism," Koertge writes, "are the professional staff at university presses, government and private foundations, and other organizations that mediate between science and the public," such as the news media. A further example that might be adduced is the field of law-and-science scholarship: Trial lawyers trying to fend off closer scrutiny of scientific testimony in the courtroom have enlisted as allies numerous Science Studies proponents who decry it as elitism for courts to "privilege" some scientific assertions over others by any efforts at quality control in the admission of expert evidence.

Histories of the scientific method which contrive to portray alchemy as somehow in tune with women's needs, while pouncing on occasional sexist metaphors to malign Francis Bacon and other forerunners of the modern method, are at best perversely selective.

Postmodern critiques of science have also been surprisingly popular in the less developed world—but perhaps not in the ways their Western originators foresaw. In India, for example, according to contributor Meera Nanda, Hindu nationalists have been delighted to seize on Western multiculturalist doctrines proclaiming the superiority of "local ways of knowing."

Such ideas have helped the rightist Bharatiya Janata party rally support among intellectuals for curricular reforms aimed at "awakening national pride" by, for example, easing out "universal" historiography in favor of a greater emphasis on patriotic myth (such as India's role as home of the original "Aryan race") and by downgrading such instructional topics as al-

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gebra (with its unwelcome Islamic/Western associations) to make way for the "Vedic mathematics" derived from rule-of-thumb computational formulas found in certain Sanskrit verses. Even more remarkable, Pakistani proponents of "Islamic science" and "Islamic epistemology" have been "explicitly citing the work of feminist science critics" in their campaign to purge many Western ideas from the schools, and certain feminist professors in the West—perhaps caught up in the thrill of having their work cited half a world away—have favorably cited the Islamicists right back.

Scientific Perspective: Postmodern critics of science mistakenly contend, says Noretta Koertge, that claims of fact must be viewed as products of culture, gender, ethnicity, and class.

That isn't the only odd meeting of minds under way between academic trendiness and religious fundamentalism (see "Dark Bedfellows," January). Matt Cartmill, writing last year in *Discover*, refers to "the strange alliance against Darwin that's emerged in recent years between the forces of the religious right and the academic left" (which of the two, one wonders, hates Richard Dawkins more?). Ehrenreich and McIntosh likewise observe in *The Nation* that the dogmatic "antibiologism" of much of the feminist left results in an "ideological outlook eerily similar to that of religious creationism."

In both cases it's thought a menace to dignity and good morals to inquire too closely into our lineal closeness to the brutes, the main difference being which brutes are in question (for the hardcore feminists, the unwelcome member of the family tree is not so much the outright ape as the macho caveman). Indeed, Gross and Levitt report that at least one prominent Science Studies advocate has endorsed the introduction of creationism into public school classrooms—a position that may take on multicultural momentum as it is more widely noted that evolutionary doctrine conflicts with the creation myths not just of Judaism and Christianity but also (as one leftist professor points out) of "many traditional Native American, African, and Eastern religions." Since multiculturalism has already led to the avoidance in school curricula of archaeological findings considered touchy for Native Americans—some textbook publishers, for example, have apparently omitted reference to the Bering Strait migration after they were informed that many tribes hold as faith that they have "always been here"—it's hard to see in the long run how the schools can say no.

In many ways the perfect complement to *A House Built on Sand* is *Fashionable Nonsense: Postmodern Intellectuals' Abuse of Science* (Picador USA), in which NYU physicist Alan Sokal and co-author Jean Bricmont document in comic detail the tendency of Jacques Lacan, Jean Baudrillard, Gilles Deleuze, and other high French theorists to spout off about scientific matters which they appear to understand very poorly. (Sokal gained fame with a 1996 hoax in which he got the journal *Social Text* to publish his lampoon of deconstructionism, full of deliberate nonsense about the nature of science, as serious criticism.) Aside from being a crucial influence on Science Studies, the French theory mafia has some direct overlap with it; Latour and Irigaray get extended treatment in both books.

Fond of invoking such terms as *non-Euclidean space, discontinuities,* and *nonlinearity,* the Parisian savants fall painfully between the stools of poetic and literal usage. They keep imagining that the acceptance by the scientific world of such concepts as irrational numbers, relativity, incompleteness, Heisenbergian uncertainty, and chaos theory must somehow mean that science's account of the world or of human society has grown more irrational, relative, incomplete, uncertain, or chaotic, a notion that plenty of scientists would have been happy to talk them out of. Lacan's obsessively pursued analogies between psychoanalysis and topology are "the most arbitrary imaginable," Baudrillard's musings on exponentialism and turbulence lead him into a "gradual crescendo of nonsense," and so forth. They wanted "anti-foundationalism"? They got it: Sokal and Bricmont have kicked the props out from under them.

But why, one wonders, has it been left to the left to do so much of the heavy lifting on these refutations? (Sokal, Levitt, Ehrenreich, and several of the *House Built on Sand* contributors proclaim themselves on the left, and there's scarcely an acknowledged conservative in sight.) Perhaps one reason is that much of the right in recent years has grown markedly uncritical toward its own irrationalist and anti-scientific factions, as reflected by the spread of creationist arguments in one conservative journal of opinion after another in recent years. (See "Origin of the Specious," July 1997.) In a newly written preface to last year's softcover edition of *Higher Superstition,* Gross and Levitt ruefully note this continued resurgence of creationist agitation and declare that if they were writing the book today, "the 'academic right' would have to join the academic left in its subtitle and there would have to be a chapter on 'Intelligent Design Theory.'"

In the meantime these books strike much-needed blows against the charlatanry of the learned. ◆

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Welfare Cases

By Daniel Shapiro

Social Welfare and Individual Responsibility, by David Schmidtz and Robert E. Goodin, New York: Cambridge University Press, 240 pages, $14.95 paper

Social Welfare and Individual Responsibility is the first in a philosophical "for and against" series launched by Cambridge University Press. Robert Goodin, a philosopher at Australian National University, defends the welfare state as an efficient vehicle for collectivizing responsibility. David Schmidtz, a philosopher at the University of Arizona, sees the welfare state as a destructive institution that prevents people from taking responsibility for their own lives. Despite the premise of the series, the essays included here are not of the point-counterpoint variety. Goodin and Schmidtz wrote their essays (both of which are extremely well-written) with knowledge of the other person's views, but they only occasionally remark on those views.

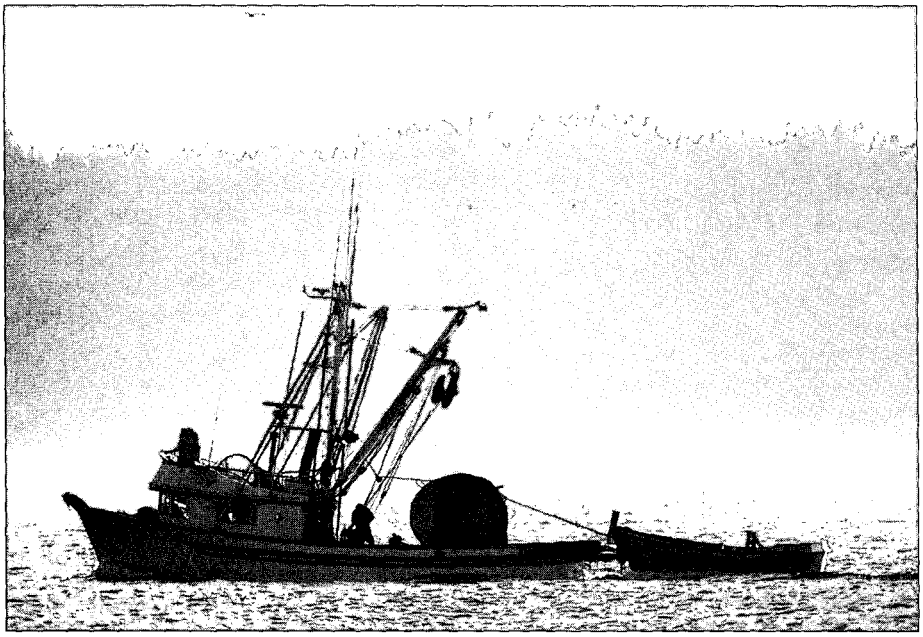
This much they agree on: Rather than assigning blame, the issue is what makes people better off in the future. Otherwise, however, the authors inhabit very different frameworks. Goodin says that the virtue of responsibility is largely irrelevant to the welfare state debate. For him, the key question is: Given that certain people can't or won't take responsibility for themselves, what do we do? Schmidtz thinks Goodin's question exemplifies a static, or snapshot, perspective. For Schmidtz, the proper question is: How do we make it less likely that people will need help in the first place?

Goodin criticizes those who object to unconditional welfare payments because they promote "dependency" and those who extol the virtues of "self-reliance." He points out, correctly, that there is nothing wrong with dependency per se—we are all dependent on one another—and that the suggested alternative to state-funded welfare is *more* reliance on others, such as family and friends, rather than setting up an independent household. But while Goodin shows that the notions of dependency and self-reliance cannot *by themselves* be used to criticize welfare policies, he may win the battle and still lose the war on the issue. For what critics have in mind, one suspects, is that the *kind* of dependency or lack of self-reliance promoted by unconditional welfare payments fails to prepare one for responsible adulthood, making a living for oneself, and in that sense being independent.

Goodin's criticisms of those who celebrate independence and self-reliance are mainly a backdrop to his two main arguments in support of the welfare state. He contends that lack of opportunity for the chronically poor justifies welfare and that greater efficiency justifies social insurance.

The argument for the former at times rests on a very static perspective. Goodin argues that it is false to claim that any able-bodied welfare recipient can get a job, because at any given time one person's success at landing a job precludes others from doing so. Indeed, he even flirts with the argument that those who are unemployed do the rest of us a favor, since they enable us to get jobs that otherwise might not be available. Such notions clearly ignore the actual dynamics of job markets in a capitalist economy, which, in normal times, produce a net increase of tens of thousands of jobs per month.

At other times, Goodin argues that we are in a long-run period of structural unemployment. There are not, he says, enough jobs, or at least enough jobs that pay sufficiently well to get out of poverty. So what critics take to be a lack of will on the part of long-term welfare recipients is actually a lack of opportunities. Suffice it to say that, in American context, it is jarring to read such claims when the United States has historically low unemployment



Fishing for Answers: Open access to a common scarce resource, such as a body of water, makes people unable and unwilling to take responsibility for it. Property rights help prevent such "tragedies of the commons" by giving owners the ability to capture benefits—and pay costs—of maintaining the resource.

rates and when even the formerly hard-core unemployed are getting jobs. Europe and other similarly regulated economies do have higher levels of "structural unemployment," but that is largely due to state-mandated restrictions on hiring, firing, and compensation (as Schmidtz points out).

Goodin's other main argument—for state-funded and administered social insurance—involves three claims. First, using worker's compensation as a model, Goodin argues that when causes are complex and intertwined, it typically costs more than it is worth to try to disentangle them and establish personal responsibility. Thus, a no-fault system is the best way to establish liability for workplace accidents. Second, he argues that certain common risks, such as being unemployed during a severe recession or depression, make private insurance unfeasible. Finally, in discussing retirement plans, Goodin argues that since private companies can go bankrupt, the state must inevitably be involved in providing some sort of guaranteed pension.

None of these three arguments, however, establishes the need for "social" as opposed to market insurance. As University of Chicago law professor Richard Epstein has shown, no-fault systems of worker's compensation arose in the 19th century as a contractual way of handling industrial accidents.

The interdependent risk argument is also empirically suspect. Schmidtz points out that, as early as 1919, the Metropolitan Life Insurance Company in New York was prepared to offer private unemployment insurance, but a bill allowing it was vetoed by then-Gov. Franklin Roosevelt. Even during the Great Depression, the percentage of the population that was eligible for unemployment insurance was never higher than 25 percent, not enough to bankrupt a company. True, an insurance company cannot predict when economic downturns will occur. But it can require savings to cover unpredictable unemployment along with premiums to cover predictable unemployment (based upon occupation, region, age, etc.). Goodin is cognizant of this point, but he suggests that requiring savings ruins the logic of insurance, since premiums from the winners (insureds who suffer no loss) aren't covering payments to the losers. Perhaps, but combining insurance with savings is hardly a new idea, and the combination shows that government is not needed to provide unemployment insurance.

When it comes to retirement pensions, the bankruptcy of companies is indeed a risk, but it is a relatively low one that must also be compared with the political risk that programs such as Social Security and Medicare won't be able to keep their promises—which affects everyone, rather than just a few who might be harmed by private insurance's bankruptcies.

Given the book's title, one might expect David Schmidtz to defend "individual responsibility," just as Goodin defends "social welfare." But Schmidtz does not think that the real issue is individual vs. collective responsibility. Collective responsibility per se is not, he says, a problem—not every individual can take responsibility for himself. The issue for him is "externalized" responsibility. Economists say a decision involves a negative externality when someone other than the decision maker bears some of the decision's costs. Analogously, Schmidtz defines externalizing responsibility as failing to take responsibility for the messes one causes or the messes one finds oneself in.

The welfare state, David Schmidtz argues, replicates the features of disasters in collective property. By giving people a right to extract benefits from productive ventures without contributing to them, it has turned production into a commons problem.

To internalize responsibility, by contrast, is to take responsibility, either as an individual *or* as a group, for one's welfare, one's future, and the consequences of one's actions, rather than dumping it on others. Schmidtz argues that the key to making individuals and societies prosper is internalized responsibility. He focuses on property rights, since they are the preeminent institutions by which people take responsibility for their own welfare. They do this in large part by eliminating or minimizing varieties of the tragedy of the commons—what results when open access to a common scarce resource makes people unable and unwilling to take responsibility for that resource. Property rights help prevent such "tragedies" because they give owners a right to exclude nonowners, giving the former the ability to capture the benefits of their effort but also making them pay for their own mistakes.

Exclusion, of course, is not solely a feature of private property. Communes, for example, restrict the access of nonmembers, and the use of public property is restricted in all sorts of ways. Private property, however, is more efficient in rewarding individual contributions. While communal and public property tend to cultivate overconsumption and underproduction, private property makes it harder for people to shirk their responsibilities. Communal property can avoid tragedy of the commons problems by limiting membership and intensely monitoring members' consumption and production activities.

The Hutterite sect has a strict sharing of assets and has maintained successful communal ownership since the 16th century. They require formations of new settlements when the numbers get above 120; communal dining and worship, which occur several times daily, provide immediate feedback on members' activities. Public property can also succeed if it is based on the local evolution of shared customs rather than control by a distant government bureaucracy.

In medieval times, for instance, private ownership of land during growing season gave way to village ownership of land during the grazing season. This worked because custom prevented the ruin of the commons by practices such as "tinting," owning livestock only in proportion to one's growing season holdings.

But the positive effects of intense monitoring, small numbers, and local control are destroyed by guarantees of a share of the product independent of contribution.

Consider colonial Jamestown, Virginia, where the guarantee of an equal share nearly killed off the settlement. Despite near starvation, almost no one was willing to plant the crops, and settlers caught wild animals at night, when they wouldn't have to share them with their neighbors. For Schmidtz, Jamestown and other disasters in collective property demonstrate what happens when collective responsibility and externalization come together.

That bad combination, he argues, has been replicated in the welfare state. By giving people a right to extract benefits from productive ventures without contributing to them, the welfare state has turned production into a commons problem. The results aren't as bad as Jamestown, of course, but the same principle applies, whether it be unconditional assistance to the poor that reduces work efforts or social insurance programs that foist the cost of unfunded benefits on later generations.

But how, Schmidtz asks, can we collectivize responsibility without externalization? While most libertarians and conservatives would probably suggest charity, Schmidtz persuasively argues that, historically, this has not been the main answer. Prior to the welfare state, welfare services were voluntarily provided largely by mutual aid societies (or "friendly" societies, as they were called in Britain).

Membership in these groups was often based on ethnicity or occupation, and their guiding principle was reciprocity, not charity. They offered death benefits and, as they evolved, low-cost medical care, assistance during times of unemployment and other misfortunes, and so forth, in exchange for dues and attendance at the society's lodge, which also functioned as a social center. In Britain, something like 75 percent of all workers belonged to a friendly society by the early part of the 20th century. The numbers were lower in America, but strikingly high percentages of certain ethnic groups, especially blacks, Jews, and Italians, belonged to these societies prior to the Great Depression.

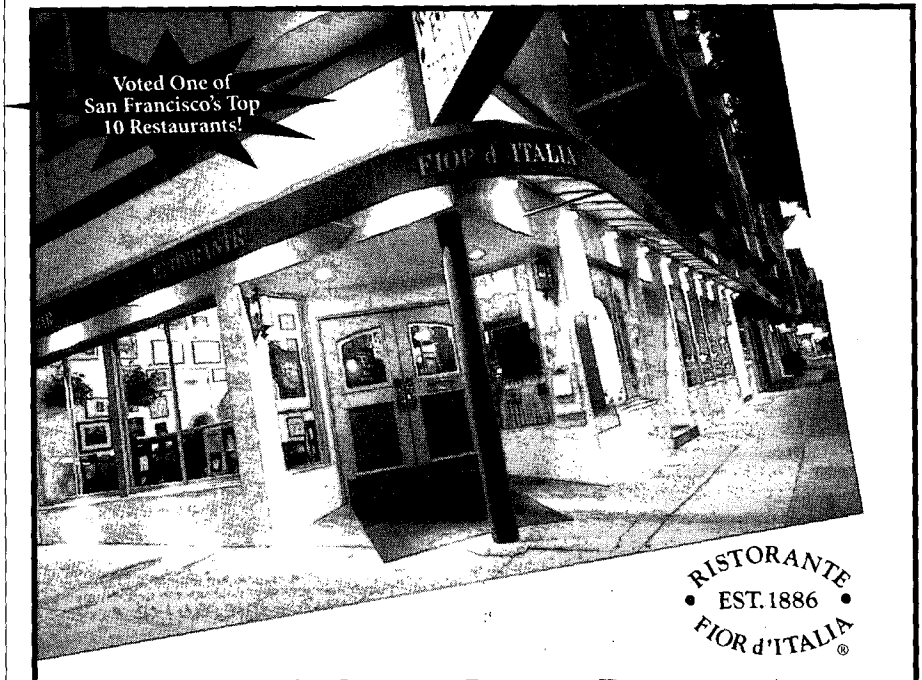
The welfare state effectively put the mutual aid societies out of business, leaving open the question of how best to revitalize them. Schmidtz, unfortunately, offers no real guidance. He points to market-based solutions for social insurance, such as private pensions and medical savings accounts, but says little about how best to reintroduce the spirit of mutual aid for the chronically poor.

If Schmidtz's contribution to *Social Welfare and Individual Responsibility* reads more like it was written by a social scientist than a philosopher, that may be because he has degrees in both philosophy and economics. Schmidtz's style of argumentation reflects his interdisciplinary background. But Schmidtz's argument style may reflect more than his interdisciplinary background.

One way of understanding a classical liberal approach to social and political philosophy is to see it as beginning with the basic facts and constraints of human nature, and then seeing how normative arguments about justice can fit into that empirical frame. Thus, Schmidtz is constantly reminding his fellow philosophers about truths that may be second nature to REASON readers: Commerce is not a zero-sum game; fraternal feeling functions best in small, voluntary groups; helping the disabled or those unable to work should not break the link between income and contribution for those can work.

Only in his last chapter does Schmidtz take up the question, "But Is It Just?"—the query that would be the starting point for most political philosophers. While Schmidtz does not offer a theory of justice, he does have some useful and insightful things to say. Justice—giving each person his due—is a "cluster" concept, he says, meaning that different ideas of what a person is due are appropriate in different circumstances. Schmidtz sees egalitarian views of justice, which are rampant in philosophy, as overgeneralizing from contexts where equal shares or equal opportunity are appropriate default rules, such as when prior production is irrelevant (say, dividing up a cake at a party) or when one aims to measure excellence (as in a game or contest).

Whatever conception of justice is most appropriate in a particular context, Schmidtz says, one should not prefer a



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conception that tends to produce destitution over prosperity. This may sound obvious, but as Schmidtz rightly notes, many philosophers' thought experiments start with a default rule of equal shares—which is often a prescription for making people worse off.

Despite its many virtues, two features of Schmidtz's argument are worrisome. First, his discussion of responsibility is insensitive to the distinction between whether one was morally or casually responsible for getting into a mess in the first place: Schmidtz defines externalization as not taking responsibility for the messes one makes *or* finds oneself in, and he employs the same disjunction when discussing internalization. He does this because he thinks the issue of blame is beside the point—for him, what makes people better off is their taking responsibility for their future. But what if blaming people is essential for getting them to take responsibility? This issue is not addressed by Schmidtz, and I think it is an important omission. It is out of fashion to champion "stigmatizing" people, but perhaps we have placed too great a stigma on stigmatization.

Second, the case Schmidtz makes—and this is generally true of libertarian arguments against the welfare state—is tied too closely to the failures of the *American* welfare state. This is no small point because there is a widespread sense that at least some European welfare states have not worked as poorly. Since Schmidtz's arguments link the moral flaws in the welfare state with its practical problems, if the latter are not inherent in all welfare states, then neither are the former.

Sweden, for example, has been the pinup model for the welfare state since the 1960s, and while the financial burden of its welfare state has caused economic problems, it is note-worthy that even such a writer as P.J. O'Rourke described Sweden as "socialism that works" in his recent book, *Eat the Rich.* O'Rourke may in fact be wrong, but the case against the welfare state is incomplete until one addresses the claim that the welfare state can work reasonably well in a smaller, more culturally homogeneous society where people do view the state as a vehicle for internalizing responsibility.

Still, there is no question that Schmidtz's essay is, overall, an excellent piece of work. It is written with an air of sweet reasonableness to it, and his discussion ranges smoothly from work in political philosophy to recent work in law and economics. His way of framing the issues is intuitively appealing and may, if it gets the attention it deserves, make political philosophers realize that they cannot theorize about justice in an institutional vacuum that ignores basic facts about markets, human motivation, and history. ◆

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Purchase Disorder

By Jack Hirshleifer

Luxury Fever: Why Money Fails to Satisfy in an Era of Excess, by Robert Frank, New York: The Free Press, 328 pages, $25

Robert Frank believes that what our economy needs is a vast increase of taxation and government expenditure. Why? Because private persons left alone buy the wrong things.

But hey, before you tune out in disgust, listen to what the man has to say. He has a case. Frank's previous works prove him to be an outstanding creative economist. They include two important books representing novel approaches to the explanation for wage and income inequality: *Choosing the Right Pond* (1985) and, with Philip J. Cook, *The Winner-Take-All Society* (1995). His *Passions Within Reason* (1988) helped introduce economists to an issue long overlooked, the biological and cultural underpinnings of human preferences. These earlier works have been well-received on professional grounds and, what is more remarkable for economic writings, they are readily comprehensible by an intelligent general audience. In *Luxury Fever,* Frank draws out some rather disturbing implications of these earlier studies.

Frank is well aware of the disincentive effects of taxes, of the ways government regulation distorts decision making. So where and why does he veer from the straight and narrow? The answer: Frank might have been a libertarian, had he not been mugged by Thorstein Veblen.

Free markets respond very well to human preferences, Frank believes, but there is a flaw in those preferences themselves. We often desire goods not for the substantive benefits they confer but only for purposes of display and assertions of status—for what Veblen termed "conspicuous consumption." You can buy a serviceable wristwatch for $20, an excellent one for $200. But if you want to impress your friends, there's a Patek Philippe for $17,500. That is, if you're willing to settle for a regular production-run model. Should you really care to make a statement, a Patek Philippe Calibre '89, of which only four were manufactured, might dent your wallet for over $3 million.

Or take houses. Bill Gates' new 45,000-square-foot lodgings may set him back $100 million—over $2,000 per square foot. But Microsoft co-founder Paul Allen has topped him with a 74,000-square-foot palace. And then there are the yachts. Aristotle Onassis' *Christina* appears to have been surpassed by rival Stavros Niarchos' *Atlantis,* which is 50 feet longer. On the other hand, *Atlantis* has nothing comparable to the barstools aboard *Christina,* covered as they are with a most exceptional fabric: "the buttery soft—and jarringly expensive—foreskin of the sperm whale penis."

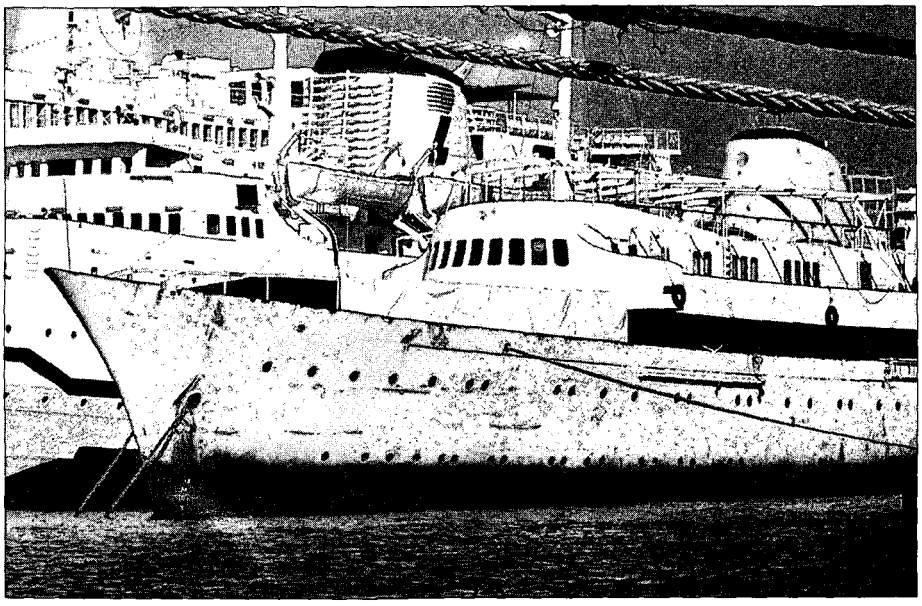
Well, is there anything so very wrong with all that? Does conspicuous or "positional" spending provide any stronger ground for government regulation than ordinary material consumption, which can certainly be piggish enough to revolt sophisticated sensibilities? In either case, if

you don't like what Mr. X spends his money on, what business is it of yours? For Frank, the objection is that positional consumption is a zero-sum game. *Atlantis* and *Christina* measure in at 375 and 325 feet, but perhaps Niarchos could have dished Onassis equally well had both vessels been half the size. More generally, the satisfaction one person gains from an increment of *positional* consumption is matched by a corresponding psychic loss imposed upon everyone else.

Furthermore, as income and wealth grow over time, Frank argues, not only the super-rich but even the merely affluent may be approaching saturation when it comes to simple material consumption. Our stomachs are only so big, our bodily frames can carry only so much clothing—even our psychic capacities to enjoy physical pleasures are limited. In contrast, status will *always* be in fixed supply. So the problem of positional consumption, if it is a problem, will grow worse and worse as more people can afford to play the game. As the economy progresses, we will all be devoting more and more effort to a mutually self-defeating activity—conspicuous consumption intended to spite our friends, neighbors, and business associates.

For Frank, this motivation has important unpleasant consequences apart from waste and ugliness. First of all, he claims, it makes us work too hard. Struggling to earn the income needed to mortify our neighbors keeps us from enjoying many really worthwhile activities. We could tend our gardens, read books to the kids, listen to fine music, go to the art museum. Second, he complains, the display motive inclines us to prefer spending over saving. Consumption is more conspicuous than dough quietly accumulating in bank or brokerage accounts.

Third—grit your teeth now, readers, 'cause you're not going to like this—the need to pay for conspicuous consumption makes us less enthusiastic than we ought to be about taxes. "Luxury fever" makes us unwilling to vote for government levies that could provide for sanitation and disease control and rapid transit and other needed public goods, or for socially and morally desirable aid to the poor and homeless.



Whose Is Biggest?: Aristotle Onassis' yacht was 325 feet long and featured barstools upholstered with the foreskins of sperm whale penises. Robert Frank decries such conspicuous consumption as wasteful and wrong.

The solution? Frank proposes a progressive *consumption* tax (rather than a higher *income* tax). A consumption tax is called for, since he doesn't want to discourage saving. The progressive feature is needed, because a merely proportional tax would impinge in a more or less parallel way upon both the innocent and the guilty, that is, upon both material and positional consumption. A progressive tax, in contrast, would especially hit the rich—who, in the nature of the case, are the ones who can and do spend more on positional goods.

So what's wrong with this story, if anything? Classical liberals can point out several flaws in the argument, but I will mention only one problem: implementation. It is always possible for a reformer to come up with ways in which the world might be improved. But even the best of reforms has to be carried out by imperfect, often downright corrupt, humans. Although early reforms like public sanitation and aid to the poor were and are defensible, the social processes at work have led to our current overgoverned society in which the minute details of private and social life are subjected to bureaucratic manipulation.

We live today with a vastly oversized "public sector," a euphemism for the huge parasitic class of politicians and bureaucrats and their allies: teachers' unions, class-action attorneys, journalist flacks of the welfare state, and other unindicted co-conspirators. Surely any reasonable person must shudder at the prospect of putting a huge new source of tax revenue in the hands of that crew.

In fact, one could well argue—Adam Smith certainly did—that those charged with public spending are likely to be even more interested in conspicuous spending than private persons. Think of the tax-financed white-elephant ballparks, the ornate federal office buildings that have

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sprung up not only in Washington, D.C., but just about everywhere, the hypertrophied public transit systems lacking nothing but riders, the Agriculture Department's wildly wasteful irrigation schemes. Simple corruption is very likely the major explanation, true, but politicians' desires for "monuments" (Hoover Dam, J.F. Kennedy Airport, the Sam Rayburn Office Building) are a big part of the story behind such travesties.

One technical objection: Frank errs in believing that *saving* is intrinsically less of a positional expenditure than consumption. Saving represents a transfer of consumption from the present to the future. Although saving today does reduce present consumption, both material and positional, it serves to augment future consumption, in turn also both material and positional. So the logic underlying his proposal for a progressive *consumption* tax falls to the ground. To the extent that Frank's main contentions are valid, they imply the desirability of a straightforward increase in both the magnitude and progressivity of the ordinary income tax.

That brings us to the problem of incentives, on which Frank swings both ways. Like most proponents of high taxes and big public spending, he is skeptical that tax penalties will have much of an adverse effect upon incentives. But earlier on he had claimed we were all working too hard. If that were so, the discouraging effect of high taxes should require no apology on his part—it might be just the corrective medicine needed to keep us at home playing with the kids.

Getting back to fundamental issues, the deep-seated biological and cultural forces underlying our desire to achieve and demonstrate high status will not be stamped out by a mere tax scheme. What will individuals with strong status drives do if punitive taxation deters them from conspicuous consumption? They will seek status by other means. Dr. Johnson said, "There are few ways in which a man can be more innocently employed than in getting money." And, he might well have added, in *spending* his own money.

If we discourage spending on consumption displays, some of the alternatives could be quite praiseworthy—for example, competition in philanthropy. Some high achievers may shift from big-salary jobs to careers of greater social value, perhaps in space exploration or scientific achievement. On the other hand, we can imagine competition for notoriety in evil, along the lines staked out by the Marquis de Sade or Larry Flynt.

Overall, however, the biggest status game in town is not big spending but acquiring power over other people. In short, politics. So a likely consequence of sumptuary legislation would be more and more intense contests over the perennial question, "Who shall be king?" As usual, Adam Smith said it best, in *The Wealth of Nations*: "It is of the highest impertinence and presumption...in kings and ministers, to pretend to watch over the economy of private people, and to restrain their expense, either by sumptuary laws, or by prohibiting the importation of foreign luxuries. They are themselves always, and without any exception, the greatest spendthrifts in the society. Let them look well after their own expense, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will."

Still, I am inclined to defend Frank in one important respect: as a moralist and a Jeremiah. If our society is to remain at its barely civilized level, from time to time we do need to be reproved for the vulgarity of wasteful consumption, not to mention the in-your-face boorishness currently recommended by ideologies of self-assertiveness and self-esteem. Although all of us are at fault, it is up to those who cash in most of the benefits of civil society, the rich and powerful, to take the lead in restraint. Frank avoids smarmy preaching, but Andrew Carnegie had it right in saying that great wealth is a sacred trust.

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Overall, the biggest status game in town is not big spending but acquiring power over other people. In short, politics. So a likely consequence of sumptuary legislation would be more and more intense contests over the perennial question, "Who shall be king?"

Hollywood Cynic

By Steve Kurtz

On Sunset Boulevard, The Life and Times of Billy Wilder, by Ed Sikov, Hyperion, 675 pages, $35.00

When discussing the success of immigrants, the phrase "only in America" often comes to mind. It takes on an added urgency in the case of filmmaker Billy Wilder since, in some ways, his was a choice between America and annihilation.

That stark reality energizes Wilder's immensely entertaining and influential body of work. His appreciation for the glittering surface of pre-Nazi European society and what lay just underneath it—poverty, prejudice, and mass death—helped shape a worldview that created some of the most caustic portraits of humanity ever to come out of Hollywood. As significant, his hand-to-mouth living experiences, first as a Jew in the remains of the Austro-Hungarian empire and later as an immigrant in the American movie business, taught him the need to deliver, to please an audience. Such experiences—and immense talent, of course—helped create arguably the most distinguished career a Hollywood writer-director has ever had.

Ed Sikov's book, *On Sunset Boulevard,*

The Life And Times of Billy Wilder, tells a classic Hollywood tale of rags to riches—and of self-invention. Sikov has unearthed many new facts and dutifully sets the record straight on the false tales Wilder spread about himself. It turns out, for instance, the young journalist Wilder didn't interview Sigmund Freud, Richard Strauss, Arthur Schnitzler, and Alfred Adler all in the same day; nor did he live in the ladies' room at the Chateau Marmont in his early Hollywood life.

But Wilder's true life story, it turns out, is as interesting as anything he might have made up. Wilder was born in 1906 in Poland. Though that society was openly anti-Semitic—after World War I, Wilder's father requested Austrian citizenship but was summarily denied for being a "Polish Jew"—young Billy was a go-getter and before the age of 20 was making a living in Vienna as a journalist. His writing was lively and caustic, a style that would serve him well throughout most of his lengthy career. Working as a guide for Paul Whiteman's jazz band, he traveled to Berlin, the center of German filmmaking, and insinuated himself into the industry, writing numerous screenplays and treatments. By the early '30s, he was one of the top screenwriters in Germany.

But Wilder could read the writing on the wall. He left Germany in 1933, first for Paris, then for New York, and, finally, for Los Angeles. There, director Joe May, another German refugee, helped Wilder get a temporary gig at Columbia. But times were hard, especially for a man whose English was mostly limited to phrases he'd learned from jazz records. When his job ended, immigration law required Wilder to leave the country and enter on a new visa. He went south of the border to Mexicali, and (according to Wilder, anyway—no one can verify this) though he hadn't the proper papers, the American consul asked him what he did. Wilder replied, "I write movies." The official was intrigued, stamped Billy's papers and told him to "write some good ones." (Wilder thanked this unknown man when he received an honorary Oscar in 1988.)

Now a resident alien, Wilder still had trouble getting work until he was teamed with Charles Brackett, a quiet, conservative man 14 years his senior. Though they were temperamental opposites, their styles meshed and they were soon Hollywood's hottest writing team, creating such treats as *Midnight* (1939), *Ninotchka* (1939), and *Ball of Fire* (1941). But now Wilder, unhappy with the lack of respect he and his scripts got, wanted to direct. Writers directing was, at the time, a new and unpleasant idea for the front office. Studios were factories turning out a product; writer and director were separate jobs, not steps on a ladder. But, following a trail blazed by Preston Sturges a few years earlier, Paramount allowed Wilder to direct *The Major and the Minor* in 1942.

The film was a hit, and Wilder never looked back. In time he'd receive a total of 20 Academy Award nominations, winning six. In 1944 came *Double Indemnity,* one of the earliest and best films noir. In 1945, *The Lost Weekend,* about the horrors of alcoholism, won the Best Picture Oscar. Five

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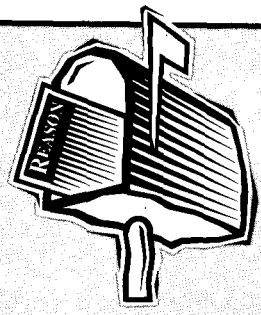

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Sugar Coated Cynicism?: Critics such as Dwight Macdonald attacked Wilder for "not [being] cynical enough; he uses bitter chocolate for his icing, but underneath is the stale old cake." (Pictured: Sig Ruman and William Holden in *Stalag 17*.)

years later, Wilder made the film he's most celebrated for today, *Sunset Blvd.* Then, perhaps feeling he didn't need to share his fame, Wilder left Brackett.

Wilder did solid work with various writers through the 1950s until, starting with *Love In The Afternoon* (1957), he found his second great collaborator, I.A.L. Diamond. In 1959, Wilder made his greatest comedy, *Some Like It Hot,* and in 1960 released his most honored film, *The Apartment,* for which he won three Oscars (writing, directing, producing). In 1963 he made *Irma La Douce,* his biggest grosser.

Wilder's career was at its height. Twelve of the first 18 films he'd directed were hits, and only two had been outright flops. But cracks were starting to show. Critics attacked him for what they considered his cynical protagonists' "unearned" redemption. John Simon said Wilder's work was "cynicism cynically sugarcoated" so as to have "no therapeutic, moral, or artistic validity." Pauline Kael said Wilder "pulls out laughs the way a catheter draws urine." Stanley Kauffmann accused him of having the "second-stage sentimentality of the professional cynic." Dwight Macdonald wrote, "Although Mr. Wilder is considered a very cynical fellow in Hollywood, he seems to me not cynical enough; he uses bitter chocolate for his icing, but underneath is the stale old cake." Most notably, Andrew Sarris, in a ranking of American directors, consigned Wilder to the "Less Than Meets the Eye" category, saying he's "too cynical to believe even his own cynicism."

If some critics felt he didn't go far enough, by 1964, the moviegoing public thought he had gone too far. That's when he made *Kiss Me, Stupid,* an ugly comedy in which Ray Walston plays a struggling songwriter who pimps Kim Novak, who's pretending to be his wife, to Dean Martin (playing a somewhat more lascivious version of himself) to further his career. Even today the film leaves a bad taste. It was morally condemned nationwide and flopped miserably as well.

Wilder had lost touch with his audience. He would direct six more movies, none of them significant hits, most of them flops. Once on the cutting edge, Wilder suddenly seemed old-fashioned and slow-

paced. Not that he stopped doing good work: *The Fortune Cookie* (1966) is one of his better comedies, and *The Private Life of Sherlock Holmes* (1970), though ruthlessly edited down from his original intentions, has attracted a cult following since its original failure. But by his last film, *Buddy Buddy* (1981), the timing is off, the great wit is mostly gone, and the sex jokes sound like an old man snickering. The film failed, and Hollywood was done with him.

Since then, however, Wilder's critical reputation has done nothing but rise. Andrew Sarris has publicly recanted his position and proclaimed Wilder a master. Leonard Maltin's film guide gives eight of Wilder's 25 films a perfect four stars, and another seven get three and a half. Not unlike Orson Welles in the last decades of his life, Wilder, now in his 90s, has collected one lifetime achievement award after another, even as no studio would let him make another movie.

The trick in a director's biography is establishing a balance between discussing the life and discussing the films. Sikov, to his credit, keeps the story moving but stops long enough to critique the movies, which, after all, are why we're interested. His analysis is generally insightful, and he catches things that most critics get wrong. Consider, for example, this telling moment in *Stalag 17* (1953). As hardbitten William Holden is about to escape from a German prisoner camp, he tells his fellow POWs, "If I ever run into you bums on the street corner, let's just pretend we never met before." He ducks down through a trap door but then comes back up, smiles, waves, and ducks back down. In Sarris' original attack on Wilder, he called the moment out of character and a "sentimental waste motion." But Sikov, I think, gets it right when he sees the wave instead as a "sarcastic salute, a final screw you."

On Sunset Boulevard also helps explains the origins of Wilder's worldview, where people are only looking out for themselves and sincerity is for suckers (at least until the final reel). Most significant was his outsider status: As a Polish Jew in Austria and Germany, and then a non-English-speaker in America, Wilder was hardly born a member of Hollywood's inner circle. Through hard work and talent, though, he moved from outsider to the ultimate insider, a top-of-the-line Hollywood director. Perhaps this made him feel a bit of an impostor, a feeling he exploited in his art. The theme of imposture certainly runs rampant in his work, playing a central role in *The Major and the Minor, Five Graves to Cairo* (1943), *Witness for the Prosecution* (1957), *Some Like It Hot, Fedora* (1978), and many others.

Related to Wilder's outsider status is his most famous trait, cynicism. Growing up in a harsh world, he had to develop a hustler's knack for survival. It figures that when he started making films, he'd create a gallery of protagonists who were hard-shelled, tough-talking, world-weary, and more than a bit misanthropic. And it also figures that some times—as in *Kiss Me, Stupid* or *Ace in the Hole* (1951), in which Kirk Douglas plays a reporter who exploits the tragedy of a man stuck in a cave—Wilder would go too far and turn off audiences.

In detailing Wilder's exodus from an old world to a new one of possibilities, and his rise from obscurity to accomplishment, Ed Sikov has scripted not only a Hollywood scenario but a quintessentially American one as well.

Of course, whatever the reasons for his sensibility, Wilder's films are still being enjoyed because he had immense skill and was lucky enough to get to a place where he could utilize it. He started directing to protect his scripts, an excellent reason when you're as good a writer as he was. His greatest talent, even more important than his way with snappy dialogue, was that he knew how to tell a story. This is why his directorial technique is never flashy—he wants you to become so involved that you forget you're watching a movie. (It's also why he sometimes attacked art house favorites such as Bergman, Godard, and Antonioni; he felt they couldn't tell a story and used artiness to cover up this failing.) He believed in hooking the audience at the outset and never letting them go.

That's evident even in his Hollywood directorial debut, *The Major and the Minor,* in which Ginger Rogers disguises herself as a 12-year-old to get half-fare on a train and for the rest of the film must keep up the charade for higher and higher stakes. The plot grips Rogers in its vise, and the audience as well.

The same might be said about Wilder's biography as it's laid out in *On Sunset Boulevard.* In detailing Wilder's exodus from an old world to a new one of possibilities, and his rise from obscurity to accomplishment, Sikov has scripted not only a Hollywood scenario but a quintessentially American one as well. ◆

Steve Kurtz is a Los Angeles–based writer whose favorite Billy Wilder film is Some Like It Hot.

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Roll Reversal

The quiet success of welfare reform

By Thomas W. Hazlett

NOW President Patricia Ireland, a Clinton supporter, said her organization "would not lift a finger or raise a penny to help a president who would plunge 1 million more women and children into poverty."

So reported the *San Diego Union-Tribune* on August 23, 1996—the day after the president signed a law ending welfare as we knew it (and as NOW preferred it). In the intervening months we have witnessed the depths of NOW's sincere commitment to the women and children who suffer at the hands (and other body parts) of Bill Clinton. But much more interesting is the great commitment to the job market made by poor people forced to move off the welfare rolls.

That we do not hear more about the overwhelming success of welfare reform is evidence that a fine mist of public policy peyote has been sprayed at the Cumulo-Nimbus level. Our political discourse drifts daffily at ground zero. The Urban Institute's projection that 2.6 million poor souls would be delivered into poverty; the outpouring of Democratic Party support during the '96 election for President Clinton as the one man who could fix what he had wrought; the "where are the jobs going to come from?" taunts by welfare advocates—all are now stashed in some forgotten bin with those New Year's predictions by *National Enquirer* psychics.

Charles Murray set us up for all of this. When pressed to come up with a helpful solution in his 1984 book documenting the failed legacy of welfare, *Losing Ground*, Murray shrank from the challenge: Simply abolish welfare, he said, cold turkey.

It was irresponsible, cowardly, unthinkable—and exactly right.

Indeed, within a decade, states began playing with the notion in a politically thinkable way. The problem of long-term welfare dependency was seriously addressed when new and improved programs were ditched in favor of time limits, which made work "requirements" credible. The effort quietly starting taking off in the states about 1993, and federal legislation bolstered the trend in 1996. In the past five years, some 1.92 million welfare cases, 41 percent of the total, have been eliminated nationally. Three million remain.

Maryland's system was the subject of a 1998 study analyzing more than 2,000 welfare recipients who had gone off the dole. According to the *Baltimore Sun*, the study "found that many fears about welfare reform have not come to pass. Foster care has not been overrun with children whose parents left the welfare rolls...and recipients were not thrown out of programs, as many feared." Indeed, 93 percent of ex-recipients left prior to being kicked off.

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But the horror story remains a popular genre. As the *Los Angeles Times* reports, "In states where welfare rolls have been driven to near unprecedented lows, officials are discovering that it is no longer enough to issue a 'get a job' edict and offer some firm prodding to help them make the transition." As heartening as it is that the *L.A. Times* is discovering such venerable economic concepts as diminishing returns, the bad news for horror fans is this: Florida has successfully pared its rolls by 64 percent, while Wisconsin is down 90 percent, suggesting that states like California—which has cut its rolls only 16 percent since 1993—have a ways to go before the "low-hanging fruit" get scarce.

Still, warns the *Times*, any further reduction in the Golden State's rolls is likely to stall because various problems—from "substance abuse to low literacy levels to clinical depression—are posing stubborn obstacles to employment." If nothing else, such analysis concedes that pre-reformers ignored such obstacles, bestowing a blanket welfare entitlement on all. You think that might have led to incentive problems? Can you spell *enabler*, boys and girls?

Now, much as the welfare recipient is given a deadline, policy makers are being forced to deal with choices. Having demonstrated that an open-ended, no-obligation welfare check is about the worst we can do to our fellow man, and having seen the speed with which "work-first" mandates moved people up from relief to jobs, a tougher question arises: What to do with the social service bureaucrats who work in the welfare agencies?

Indeed, the debilitating effects of dependency have surely gone furthest within this cohort. Thus far under the new rules, they have performed professionally, meaning that they have adroitly protected their turf. Amazingly, the old flow of dollars continues, even as there are fewer and fewer "clients" to service.

These vestigial civil servants will continue to scare up rationales for why diminishing welfare rolls will reverse and why "new programs" are more necessary than ever. They pray every night for an economic crash and ponder sophisticated political strategies to stem their loss of market share. After all, they need the work—and good jobs at high wages is what welfare reform is all about. ◆

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